

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
OFFICE OF RESOURCE CONSERVATION AND RECOVERY  
OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE

PUBLIC HEARING ON EPA'S PROPOSED RULE ON  
Hazardous and Solid Waste Management System;  
Identification and Listing of Special Wastes;  
Disposal of Coal Combustion Residuals from  
Electric Utilities

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1 PARTICIPANTS:

2 EPA Hearing Panel:

3 Morning Session:

4 ROBERT DELLINGER, Chair  
5 Director of Materials Recovery and Waste  
6 Management  
7 Office of Resource Conservation and Recovery

8 LAURA CELESTE

9 GOLAM MUSTAFA

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11 Afternoon Session:

12 FRANK BEHAN, Chair  
13 Acting Chief of the Energy Recovery and Waste  
14 Disposal Branch  
15 Office of Resource Conservation and Recovery

16 STEVE SOUDERS

17 JIM KOHLER

18 ELAINE EBY

19 Evening Session:

20 ROBERT DELLINGER, Chair  
21 Director of Materials Recovery and Waste  
22 Management  
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## 1 P R O C E E D I N G S

2 (10:02 a.m.)

3 MR. DELLINGER: Good morning. Thank you  
4 for attending today's public hearing on the  
5 Environmental Protection Agency's proposed rule  
6 regarding the regulation of coal ashes that are  
7 disposed of in landfills and surface impoundments.  
8 Before we begin, I would like to thank you for  
9 taking time out from your busy schedules to  
10 address our proposed rule, and we look forward to  
11 receiving your comments.

12 This is the third of seven scheduled  
13 public hearings that we will be conducting. We  
14 had two very successful hearings last week in  
15 Washington, D.C., and Denver. The remaining  
16 hearings are scheduled in Charlotte, Chicago,  
17 Pittsburgh, and Louisville.

18 My name is Bob Dellinger. I'm Director  
19 of the Materials Recovery and Waste Management  
20 Division of the EPA's Office of Resource  
21 Conservation and Recovery. I will be chairing  
22 this session of today's public hearing. With me

1 on the panel are Laurel Celeste from our Office of  
2 General Counsel, Golam Mustafa from our Dallas  
3 regional office, and Craig Dufficy who works with  
4 me.

5 Before we begin the hearing, I would  
6 like to provide you a brief description of the  
7 proposed rule, as well as the logistics on how we  
8 plan to run today's public hearing.

9 Coal combustion residuals, or CCRs, are  
10 residues from the combustion of coal at electric  
11 utilities, and include fly ash, bottom ash, boiler  
12 slag, and flue gas desulfurization materials.  
13 Coal combustion residuals contain problematic  
14 contaminants such as mercury, cadmium, selenium,  
15 and arsenic.

16 In 2008, 136 million tons of coal  
17 combustion residuals were generated by electric  
18 utilities and independent power producers. Of  
19 that total, approximately 46 million tons were  
20 landfilled, 30 million tons were disposed in  
21 surface impoundments, 50 million tons were  
22 beneficially used, and 11 million tons were used

1       in minefill operations. EPA estimates that there  
2       are approximately 300 landfills and more than 600  
3       surface impoundments where coal combustion  
4       residuals are disposed.

5               We have proposed to regulate these coal  
6       combustion residuals to ensure their safe  
7       management when they are disposed in landfills and  
8       surface impoundments. Without proper protections,  
9       the contaminants in these residuals can leach into  
10      groundwater and migrate to drinking water sources,  
11      posing public health concerns.

12             In addition, the structural failure of a  
13      surface impoundment at the Tennessee Valley  
14      Authority's plant in Kingston, Tennessee, in  
15      December of 2008 released more than 5 million  
16      cubic yards of coal ash over approximately 300  
17      acres of land and contaminated portions of the  
18      Emory and Clinch Rivers.

19             With this proposal, EPA has opened a  
20      national dialogue by calling for public comment on  
21      two different regulatory approaches available  
22      under the Resource Conservation and Recovery Act

1       for addressing the risks from the disposal of coal  
2       combustion residuals. One option presented in  
3       that proposed rule draws from the authorities  
4       available under the Subtitle C of RCRA. This  
5       would create a comprehensive program of federally  
6       enforceable requirements for waste management and  
7       disposal.

8               The other option is based on the  
9       authorities under Subtitle D of RCRA, which gives  
10      the EPA authority to set minimum federal criteria  
11      for waste management facilities that would be  
12      enforced through citizens. Under this scenario,  
13      states would be considered the same as citizens.

14             EPA decided to co-propose these two rule  
15      options to encourage a robust dialogue on how to  
16      address the human health concerns and structural  
17      integrity issues associated with disposal of coal  
18      combustion residuals in landfills and surface  
19      impoundments.

20             EPA wants to ensure that our ultimate  
21      decision is based on the best available data, and  
22      is made with the substantial input from all

1 stakeholders. Therefore, we ask that you provide  
2 us your comments not only at today's hearing, but  
3 any other comments and supporting information that  
4 you want to provide.

5 I would also like to say a few words  
6 about beneficial use of coal combustion residuals.  
7 The proposed rule maintains the Bevill exemption  
8 for coal combustion residuals that are  
9 beneficially used and, therefore, would not alter  
10 the regulatory status of these residuals when used  
11 in this manner. EPA continues to strongly support  
12 the safe and protective beneficial use of CCRs.

13 However, the proposal also indicates  
14 that concerns have been raised with some uses of  
15 coal combustion residuals, particularly when used  
16 in an unencapsulated form. Therefore, we request  
17 comments, information, and data on specific  
18 aspects of beneficial use, particularly those  
19 activities that deal with unencapsulated  
20 applications.

21 We also make clear in the proposal that  
22 coal combustion residuals that are placed in sand

1       and gravel pits, quarries, and other large-scale  
2       fill operations are not examples of beneficial  
3       use. EPA views this placement as akin to disposal  
4       and would regulate these sites as disposal sites  
5       under either of these regulatory options.

6               Now I'll cover the logistics for the  
7       comment portion of today's public hearing.  
8       Today's public hearing will work as follows.

9       Speakers, if you were preregistered, you were  
10      given a 15-minute time slot when you are scheduled  
11      to give your three minutes of testimony. To  
12      guarantee that slot, we have asked that you sign  
13      in 10 minutes before your 15-minute slot at the  
14      registration desk.

15             All speakers, those that are  
16      preregistered and walk-ins, were given a number  
17      when you signed in today and this is the order in  
18      which you will speak. I will call speakers to the  
19      front row over here near the podium, by number,  
20      four or five at a time, depending on where we are  
21      in the program.

22             When your number is called, please move



1 to the microphone and state your name and your  
2 affiliation. We may ask you to spell your name  
3 for the court reporter who is transcribing your  
4 comments for the official record.

5 Because there are many people who have  
6 signed up to provide testimony today, and to be  
7 fair to everybody, testimony is limited to three  
8 minutes. We will be using an electronic  
9 timekeeping system and will also hold up cards to  
10 let you know when your time is getting low.

11 When we hold up the first card, this  
12 means that you will have two minutes left. When  
13 we hold up the second card, that means you have  
14 one minute left. When the third card is held up,  
15 you have 30 seconds left. When the red card is  
16 held up, you are out of time and should not  
17 continue with your remarks. Remember, you can  
18 provide any written material to our court  
19 reporter, and the material will be entered into  
20 the record.

21 We will not be answering questions on  
22 the proposal. However, from time to time, any of

1       us on the hearing panel may ask questions to  
2       clarify your testimony.

3               As I just mentioned, if you have brought  
4       a written copy of the comments that you're giving  
5       today, please leave a copy in the box by our court  
6       reporter, who is on my left, your right. If you  
7       are submitting written comments today, please put  
8       those in the box by the registration desk. If you  
9       have additional comments after today, please  
10      follow the instructions in the yellow handout and  
11      submit comments to the EPA by November 19, 2010.

12             Our goal is to ensure that everyone who  
13      has come today to present testimony is given an  
14      opportunity to provide comment. To the extent  
15      allowable by time constraints, we will do our best  
16      to accommodate speakers that have not  
17      preregistered. Today's hearing is scheduled to  
18      close at 9:00 p.m., but we will stay later if  
19      necessary.

20             If, however, time does not allow you to  
21      present your comments orally, we have prepared a  
22      table in the lobby where you can provide a written

1 statement in lieu of oral testimony. These  
2 written statements will be collected and entered  
3 into the docket for the proposed rule and will be  
4 considered the same as if you presented them  
5 orally at today's hearing.

6 If you would like to testify but have  
7 not yet registered to do so, please sign up at the  
8 registration table. We are likely to take  
9 occasional breaks, but we're prepared to eliminate  
10 or shorten the breaks in order to allow as many  
11 people as possible to provide their oral testimony  
12 today.

13 Finally, if you have a cell phone, we'd  
14 appreciate it if you would turn it off or turn it  
15 to vibrate. If you need to use your phone at any  
16 time during the hearing, please move to the lobby.  
17 We ask for your patience as we proceed. We may  
18 need to make some minor adjustments as the day  
19 progresses.

20 Thanks again for participating today.  
21 Let's get started. I'm calling up Numbers 1, 75,  
22 3, and 4. Number 1.

1                   SPEAKER: Thank you. Good morning. My  
2                   name is Mike Nasi, and I represent the Texas Coal  
3                   Combustion Products Coalition, which is comprised  
4                   of owners and operators of coal-fired power plants  
5                   across Texas that have a long history of  
6                   responsibly managing CCRs.

7                   Although we are confident that the  
8                   existing industry practice and environmental  
9                   regulatory framework is adequate without the need  
10                  for federal intervention, we would support the  
11                  EPA's efforts to establish national criterion on  
12                  two conditions.

13                 First, that the criteria be developed  
14                 with Subtitle D, not Subtitle C; and second, that  
15                 that Subtitle D criteria be implemented by states,  
16                 and states be afforded the leading role. We would  
17                 suggest the states be afforded the role that they  
18                 played in municipal solid waste regulatory  
19                 limitations, which has been successful.

20                 Rather than engage in science by sound  
21                 bite with the limited time we have, we will defer  
22                 to our written comments to set the record straight

1 to refute many of the unsubstantiated claims and  
2 alleged damage cases in Texas.

3 I'll spend the time that I have today  
4 imploring EPA to remember and look beyond the PR  
5 campaign, the negative PR campaign of the day, and  
6 remember that coal ash recycling is, in fact, one  
7 of the great American environmental success  
8 stories, a success story and gains that all could  
9 be lost if the wrong approach is taken with this  
10 rule making.

11 Back in the early 1990s, Texas had the  
12 regulatory foresight to develop a framework that  
13 responsibly managed the disposal of CCBs while at  
14 the same time expanding the markets for CCP  
15 recycling. That leadership led to an increased  
16 recycle rate of 15 percent in 1992, all the way to  
17 70 percent in 2005, successes that were recognized  
18 by EPA when it commissioned a study in 2005 to  
19 identify and describe Texas as a model state.

20 In that report, I quote, this report  
21 said: "Other states with less successful CCP  
22 utilization can learn from what Texas has done

1 right and implement similar activities in their  
2 own states."

3 That report identified as a direct  
4 threat to continued successful recycling the  
5 stigma that would result from Subtitle C  
6 regulation. There are many that would suggest  
7 that stigma is not real. We would submit to you  
8 that that 2005 report establishes that it's real.  
9 The federal agencies that have commented to EPA  
10 already on the rule establishes that it's real.  
11 You will hear from many today who spent the large  
12 part of their adult lives successfully recycling  
13 CCPs, who believe and are convinced that the  
14 stigma is real.

15 I'll go ahead and wrap up. I would just  
16 ask that we proceed with the Subtitle D as opposed  
17 to a Subtitle C approach. We will fully document  
18 all of our positions in writing. Thank you for  
19 the time to address you here today.

20 MR. DELLINGER: Number 3.

21 SPEAKER: My name is John Ward. I'm  
22 chairman of Citizens for Recycling First, an

1 organization of more than 1,500 individuals who  
2 believe that the best way to solve coal ash  
3 disposal problems is to quit throwing coal ash  
4 away. Thank you for this opportunity to write  
5 comments to the agency and for the opportunity to  
6 interact with others who are concerned about  
7 regulations for coal ash disposal.

8 At the first two public hearings in  
9 Washington, D.C., and Denver, I've had numerous  
10 opportunities to converse with people who belong  
11 to organizations that are committed to reducing  
12 greenhouse gas emission linked to climate change.  
13 Most of these people had no idea that coal ash is  
14 used to replace portland cement in the production  
15 of concrete, an activity that reduces greenhouse  
16 gas emissions from cement productions by more than  
17 12 million tons every year.

18 It's not surprising that people don't  
19 know this. The major environmental activist  
20 organizations that favor a hazardous waste  
21 designation for coal ash never mention that ash  
22 can be recycled safely with environmental

1       benefits. The Environmental Protection Agency has  
2       further contributed to this lack of understanding  
3       by removing its Coal Combustion Products  
4       Partnership Web site from the Internet just when  
5       the need for information about coal ash recycling  
6       is at its greatest.

7               Many people in this room would like to  
8       see the use of coal disappear altogether. However  
9       worthy that goal is, it won't happen overnight.  
10       Nearly half of America's electricity is generated  
11       by burning coal, and Americans keep using more  
12       electricity every year. Like it or not, coal will  
13       continue to be burned in significant quantities  
14       for many years to come. So the question remains:  
15       What should we do with the ash that is left over?

16               Recycling coal ash keeps it out of  
17       landfills and ponds where it can cause the kind of  
18       problems we will hear much about during today's  
19       hearings. Recycling it in applications such as  
20       concrete production produce additional benefits  
21       like greenhouse gas emissions reductions that are  
22       important to everyone in this room.



1           There are two regulatory options before  
2       us for comment today, the Subtitle C hazardous and  
3       Subtitle D non-hazardous. Under both proposals,  
4       new landfill engineering standards are essentially  
5       the same. Landfills won't be any stronger or  
6       better under Subtitle C, but coal ash recyclers  
7       will be saddled with a hazardous waste sigma that  
8       will make continued recycling of this resource  
9       difficult or impossible.

10           For those who deny the existence of  
11       stigma, I would ask just two questions. First, if  
12       the EPA is right and a hazardous waste designation  
13       would motivate people to recycle more, then why  
14       are the people who make their livings as recyclers  
15       unanimously opposed to it? Wouldn't they be in  
16       favor of something that would help them make more  
17       money? Perhaps it is because the people who  
18       recycle ash every day are well aware of the  
19       response you and your neighbors would give to the  
20       second question: Would you want something that is  
21       classified as hazardous waste in your home,  
22       school, or workplace?

1           The EPA should enact tougher coal ash  
2   disposal regulations, but it should do so without  
3   unnecessarily classifying coal ash as a hazardous  
4   waste and risking the destruction of a recycling  
5   effort that helps accomplish everyone's goal of a  
6   cleaner environment. Thank you.

7           MR. DELLINGER: Number 4.

8           (Discussion off the record)

9           MR. DELLINGER: Excuse me. Do you have  
10 the first half of your statement in writing?

11          SPEAKER: This one?

12          MR. DELLINGER: Yes.

13          SPEAKER: Yes.

14          MR. DELLINGER: Okay. So we'll be able  
15 to capture that.

16          SPEAKER: Yes.

17          MR. DELLINGER: You should start over,  
18 then. We can't hear you.

19          SPEAKER: You want me to start over?

20          MR. DELLINGER: Yes.

21          SPEAKER: For more than six years I've  
22 been directly impacted by the dumping of the fly

1 ash from the AES Shady Point coal-burning power  
2 plant. The trucks drive directly in front of my  
3 house and they dump it in the Making Money Having  
4 Fun fly ash pit located about a mile from my home.  
5 During the past two years, I've become very  
6 knowledgeable about the state agencies that  
7 regulate the fly ash pit.

8 My message to you today is that the  
9 state regulatory system in Oklahoma has failed.  
10 The responsibility for regulating the Making Money  
11 Having Fun fly ash pit is divided between three  
12 agencies in Oklahoma: The Corporation Commission,  
13 Department of Environmental Quality, and the  
14 Department of Mines.

15 I'm sure everybody here knows what a  
16 shell game is. It's a game played with three  
17 shells and a pea, and it's referred to as a short  
18 con because it's really easy to pull off. The  
19 agencies have used the division of jurisdiction to  
20 play a shell game with us.

21 We know that Making Money Having Fun is  
22 breaking the law, but we have to find out which

1       agency is responsible for which laws. If we want  
2       to get the laws enforced, we have to find out  
3       which agency is responsible for enforcement.

4               Like a con man, the agencies explain  
5       that finding a violation of a law is very easy.  
6       They say the law is clear. They say they are  
7       experts at enforcing the law and they are here to  
8       protect us. At first, we believe them and play  
9       their game. We would call in a violation and they  
10      would say, sorry, no violation here. We have  
11      played this game for a long time, maybe due to the  
12      investment of time, money, commitment, and  
13      sacrifice.

14             I'm pleased to report we've figured out  
15      the game. We keep finding the pea. We have  
16      exposed seven years of violations of the Clean Air  
17      Act; we've exposed Clean Water Act violations; and  
18      we're exposing the fact that this is not a mine  
19      reclamation project, but instead a surface  
20      impoundment that towers over the surrounding land.

21             We keep finding the pea in the shell  
22      game, but like a con man who has your money, the

1 Corporation Commission, the Department of Mines,  
2 and the Department of Environmental Quality keep  
3 wanting to play the game again and again. Their  
4 goal seems to be to keep dumping fly ash in  
5 Bokoshe, Oklahoma, and we are sick of playing the  
6 shell game.

7 Our state agencies, as well as our state  
8 and U.S. senators and representatives have  
9 determined that tiny Bokoshe, in rural Oklahoma,  
10 is politically inconsequential. As long as the  
11 enforcement of fly ash regulations are subject to  
12 politics, this environmental injustice will  
13 continue.

14 We need to replace the vague,  
15 subjective, and virtually unenforceable state  
16 regulations with a strict, well-established,  
17 enforceable regulation. In order to end this  
18 game, we ask the EPA to adopt Subtitle C  
19 regulations and impose strict and enforceable  
20 regulations. Thank you.

21 MR. DELLINGER: Thank you. Number 75.  
22 While he's moving to the microphone, could we have

1       Numbers 5, 6, 7, 98, and 200 move up.

2               SPEAKER: Good morning. My name is Earl  
3       Lott. I'm the director of the Waste Permits  
4       Division of the Texas Commission on Environmental  
5       Quality, and I'm providing comments today on  
6       behalf of our executive director in regards to  
7       EPA's proposed coal combustion by-products rule.

8               Texas has one of the highest number of  
9       coal facilities in the United States and  
10      consequently the largest producer of coal  
11      combustion residuals in the nation. We believe  
12      that Texas has adequate and effective regulations  
13      to safely manage coal combustion residuals. Texas  
14      has promulgated effective legislation and has been  
15      at the forefront of recycling initiatives for the  
16      use of coal combustion by-products in the  
17      industry. Coal combustion recycling rates in  
18      Texas are as high as 60 to 70 percent.

19              EPA has acknowledged that Texas has been  
20      a model state on this issue, and that was  
21      recognized in the early '90s. Recycling rates  
22      have dramatically improved in Texas, from around

1       20 to 25 percent in the early '90s to the rate of  
2       60 to 70 percent today. We've done this --  
3       achieved this through progressive legislation, by  
4       diligent work with -- cooperating with state  
5       agencies like the Texas Department of  
6       Transportation, as well as working with industry  
7       groups and utilities on building these markets.  
8       Also, Texas coal-fired facilities generally  
9       produce high-quality coal combustion residuals  
10      that are appropriate for a number of beneficial  
11      use applications in highway construction building  
12      products and infrastructure building materials.  
13      In most areas of the state, Texas has developed a  
14      fly-ash-based concrete market producing  
15      high-quality products.

16               We believe that the EPA's proposed  
17      options to regulate coal combustion residuals  
18      under the Subtitle C of RCRA threatens the great  
19      strides that Texas has made in dramatically  
20      improving the coal combustion recycling rates in  
21      Texas. The TCEQ has effective regulations in  
22      place to safely manage coal combustion residuals.

1 Even though permits are currently not required, we  
2 do require registrations and monitoring of the  
3 material, which also provides safeguards in  
4 preventing the impacts to health and the  
5 environment. Texas regulations require the  
6 characterization, classification, and submittal of  
7 that notification of the waste prior to disposal.

8 In summary, TCEQ requests the EPA  
9 carefully consider the impact of coal combustion  
10 residual regulations on beneficial use, and the  
11 TCEQ would like to reiterate the EPA should  
12 determine -- if the EPA should determine that  
13 federal regulations are necessary, we prefer the  
14 Subtitle D option rather than the Subtitle C. A  
15 regulation under C could potentially cause  
16 negative impact on the current business in these  
17 markets. Thank you for your time.

18 MR. DELLINGER: Thank you. Number 5.

19 SPEAKER: Good morning. I am Tim  
20 Tanksley of Bokoshe, Oklahoma. One of the biggest  
21 problems with state regulations of fly ash in  
22 Bokoshe, Oklahoma, is that they call the mounds of



1 fly ash mine reclamation. I personally own a  
2 tract of land that has been stripped and  
3 reclaimed. It takes an experienced eye to see  
4 that the land was ever disturbed.

5 Mine reclamation is certainly not what  
6 is happening at Making Money Having Fun's site.  
7 They have created a permanent mound of fly ash  
8 rising 55 feet above the surrounding land. This  
9 mound covers more than 20 acres. On this mountain  
10 of fly ash, Making Money Having Fun has been  
11 permitted to dump oil and gas wastewater.

12 After we showed the Oklahoma Department  
13 of Environmental Quality that this water was  
14 running off the side, the ODEQ called the EPA.  
15 Last December, the EPA issued a cease and desist  
16 order because of illegal discharges, violating the  
17 Clean Water Act.

18 We later learned that Senator James  
19 Inhofe's staff contacted EPA to find out when the  
20 MMHF could resume operation of its so-called mine  
21 reclamation.

22 I became concerned that Senator Inhofe

1        had been misinformed. I went to Washington, D.C.,  
2        and met with Senator Inhofe's staff and explained  
3        that MMHF was creating a toxic mix of fly ash and  
4        oil and gas wastewater to build a mountain a fly  
5        ash. Senator Inhofe had his staff investigate the  
6        matter. He then sent me a letter stating the fly  
7        ash mound is temporary and will disappear.

8                I understand that Senator Inhofe once  
9        said that global warming is the greatest hoax ever  
10       pulled on the American people. The biggest hoax  
11       pulled on the people of Bokoche, Oklahoma, is  
12       telling them that this mountain of fly ash is  
13       temporary and will disappear.

14               Fly ash and oil and gas wastewater  
15       create a toxic mixture, but there is another toxic  
16       mixture in Bokoche and everywhere else that fly  
17       ash is dumped. That is the mixture of politics  
18       and law enforcement. We need to face the fact  
19       that pollution is a problem. As long as we let  
20       politics influence law enforcement, the  
21       environmental injustice in Bokoche will continue.

22               The only way to eliminate this

1 environmental injustice for the people of Bokoshe,  
2 Oklahoma, is for the EPA to regulate fly ash under  
3 Subtitle C. Thank you.

4 MR. DELLINGER: Thank you. Number 6.

5 SPEAKER: Good morning. I'm Sharon  
6 Tanksley from Bokoshe, Oklahoma.

7 In 2000, people from Bokoshe protested  
8 the issuance of a permit to mine shale and clay  
9 and to dispose of fly ash in a proposed pit. One  
10 of our concerns was the potential of dust from  
11 this pit.

12 To address these concerns, Making Money  
13 Having Fun sent a letter stating -- and I quote --  
14 "Clean air laws, like clean water laws, of our  
15 land are very specific and enforceable, especially  
16 for mining operations in Oklahoma. Since the  
17 airborne dust is fly ash, they use a skimming  
18 operation. MMHS LLC will use for its proposed  
19 operation new water slurry techniques. This new  
20 technology has minimized the escape of dump fly  
21 ash into the air and prevents most of the nuisance  
22 air pollution from drifting on adjacent property

1 owners." End quote.

2 This simply isn't true. For seven years  
3 it looked like this, every time they dumped. When  
4 people from Bokoshe complained of fly ash covering  
5 their town, the Oklahoma Department of Mines and  
6 the Oklahoma Department of Environmental Quality  
7 said that Making Money Having Fun was doing  
8 everything required by law.

9 This was not true. These state agencies  
10 ignored Bokoshe's complaints until April 15, 2009.  
11 On that day, we went to a meeting of the Air  
12 Quality Advisory Council, which is part of the  
13 Oklahoma Department of Environmental Quality.

14 The staff questioned why we were there  
15 and they explained that the council did not deal  
16 with enforcement issues. The staff debated among  
17 themselves whether or not they would even let us  
18 speak. When it was mentioned that a reporter from  
19 the Tulsa World was covering the meeting, it was  
20 decided that the people from Bokoshe should be  
21 allowed to speak, and the Tulsa World reported on  
22 Bokoshe's presentation.

1           The exposure of the information from  
2       Bokoshe was so compelling that the ODEQ  
3       immediately sent a team of staff members to  
4       Bokoshe. On May 1st, 15 days after the meeting,  
5       the team reported on their investigation. They  
6       found that MMHF had been committing five separate  
7       violations of the Clean Air Act for seven years.

8           It is clear that ODEQ acted only because  
9       the public exposure created enough political  
10      pressure to force ODEQ to take action. It may be  
11      more accurate to say that for that two-week  
12      period, from April 15th to May 1st, 2009, the ODEQ  
13      staff was permitted to do their job. But that  
14      ended quickly.

15           For the next nine months, MMHF lobbied  
16      the ODEQ behind closed doors. Although the staff  
17      found seven years of Clean Air Act violations,  
18      ODEQ entered a consent order with no fines, no  
19      penalties, and no findings of violations.

20           ODEQ made MMHF agree to get the permit  
21      for its fly ash pit. ODEQ refuses to enforce laws  
22      until public exposure forces it to act, but once

1       it is away from the public eye, law enforcement  
2       stops.

3               Today, I am asking you to regulate fly  
4       ash under Subtitle C and to impose a strict and  
5       enforceable rule on the handling of fly ash.  
6       Thank you.

7               MR. DELLINGER:   Number 7.

8               SPEAKER:   I am Suella Hudson from  
9       Bokoshe, Oklahoma, and I thank you for this  
10      opportunity this morning.

11              In 1992, the AES coal-burning plant was  
12      opened, and in 1994 the Smith Daniel pit, one mile  
13      southwest of my house, was opened.   From this pit  
14      the wind -- the wind blew from the south; it blew  
15      across the yard and into my house.

16              In 2002 a company called Making Money  
17      Having Fun opened another strip pit a mile  
18      southwest of my home.   Since then, we've been  
19      plagued with fly ash blowing across the yard into  
20      the house, and since I live on the highway used by  
21      the fly ash truck, I also get all the fly ash  
22      blowing off of these trucks.   There are eight of

1       them running ten loads each day back and forth  
2       from the AES plant to the fly ash dump and back.

3               At first, we were told that there was  
4       nothing harmful in fly ash; it was just limestone.  
5       And we believed them. Since that time, we've had  
6       to accept this as our way of life. We have  
7       tolerated the fly ash blowing into our houses and  
8       in the air we breathe.

9               We put up with this until the AES plant  
10       filed a petition to build a second plant, larger  
11       than the first one, right next door to the one  
12       they had. We then realized that we could not  
13       tolerate that much more fly ash in our area. So  
14       we went to this protest meeting, and when we got  
15       through listening to the talk down there, we came  
16       home and we realized that we did not know any more  
17       about fly ash than we did before we went to the  
18       meeting.

19              My youngest daughter, a graphic artist  
20       and a whiz on the Internet, and I got together and  
21       we researched fly ash and educated ourselves, and  
22       from that the Bokoche Environmental Group was

1       born, and it's all because -- because it's in the  
2       air we breathe.

3               My daughter, Charlie, lived next door to  
4       me from 1994 to 2004, when she suddenly became  
5       sick. I took her to the emergency room. We  
6       thought it was just a bronchial infection. She  
7       was diagnosed with third-stage cancer, and she  
8       died 17 days later.

9               We didn't get concerned about the fly  
10       ash at that point. We didn't even connect the  
11       dots. But then we learned that of the 20 families  
12       living closest to the fly ash pit, 14 of them have  
13       cancer in their family and some of them have died.  
14       We recently met a gentleman and sat with him; his  
15       wife had died. And he had compiled a list that's  
16       three pages long, double-spaced, double-column, of  
17       people who have died with cancer in our area.

18               And we're asking today that you please  
19       adopt Subtitle C that classifies fly ash as  
20       hazardous. Thank you.

21               MR. DELLINGER: Number 98.

22               SPEAKER: Good morning. I'm Jim Roewer,



1 executive director of the Utility Solid Waste  
2 Activities Group, or USWAG, an association of over  
3 100 electric utilities and trade associations  
4 that's been working with the EPA for nearly three  
5 decades regarding the agency's implementation of  
6 the Bevill Amendment for coal combustion  
7 residuals, or CCRs. I appreciate the opportunity  
8 to speak today to debunk some myths about CCRs.

9 I'll leave it to others directly engaged  
10 in ash utilization to shatter the myth that  
11 Subtitle C hazardous waste regulation will  
12 actually increase beneficial use.

13 The first myth I want to dispel is that  
14 industry wants to preserve the status quo. This  
15 is not correct. In fact, we support the  
16 development of federally enforceable regulations  
17 under RCRA's Subtitle D non-hazardous waste  
18 program.

19 The second myth is that EPA's Subtitle D  
20 option is only guidance. This is not correct.  
21 Under the Subtitle D option, EPA would issue  
22 federal regulations specifically designed for CCR

1 disposal units. These regulations would be  
2 directly enforceable by the states and the public,  
3 and violators would be subject to significant  
4 civil penalties. These are real regulations with  
5 teeth, and it is misleading to suggest otherwise.

6           Some of the myths floating around are  
7 just plain silly, especially that exposure to coal  
8 ash is riskier than smoking cigarettes. This  
9 claim is based on bad science and is misleading  
10 for the following reasons: First, the coal ash  
11 risks cited in this analogy are greatly  
12 exaggerated. In fact, there is a 90 percent  
13 probability that the risk is lower.

14           If we use a more realistic coal ash risk  
15 level, one that has an equal chance of being  
16 higher or lower -- a middle estimate, if you will  
17 -- the cancer risk from coal ash exposure is  
18 actually lower than the cancer risk from drinking  
19 water meeting the current federal drinking water  
20 standard for arsenic, and lower than the  
21 comparison's incorrect and greatly underestimated  
22 lifetime cancer smoking risk. Second, the analogy

1 is comparing apples and oranges. It is  
2 inappropriate to compare the prevalence of cancer  
3 from smoking that reflect the actual number of  
4 cancers caused by smoking with hypothetical  
5 lifetime cancer risks from coal ash that are based  
6 on greatly exaggerated conservative assumptions.

7 The comparison also greatly  
8 underestimates the actual risk from smoking in an  
9 attempt to make the risks from coal ash appear so  
10 much greater. In fact, the actual lifetime risk  
11 of lung cancer from smoking is greater than 10,000  
12 per 100,000 smokers, more than 10 percent. This  
13 risk is more than 1,000 times greater than the  
14 hypothetical risk from coal ash.

15 We have to base any regulatory decision  
16 on sound science and not trumped-up or inaccurate  
17 charges. The truth is that the actual risks from  
18 CCRs can be properly addressed by federal  
19 non-hazardous Subtitle D regulations.

20 There is simply no reason for the EPA to  
21 pursue the Subtitle C approach when it can develop  
22 federally enforceable rules under the less

1 controversial, yet equally protective, Subtitle D  
2 non-hazardous waste program. Thank you.

3 MR. DELLINGER: Thank you. Number 200.

4 SPEAKER: Good morning. My name is Tom  
5 Shaw. I am with Harsco Corporation, a global  
6 industrial services company with over 22,000  
7 employees. We have multiple operations in Texas,  
8 two of which are dedicated to processing coal slag  
9 as an abrasive blasting grit or roofing granule.

10 Since the 1930s we have been a green  
11 recycler of boiler slag. Boiler slag is formed  
12 when extremely hot molten coal ash is quenched  
13 with cold water, and the coal ash immediately  
14 becomes a vitrified, amorphous solid, glassy  
15 matrix known as boiler slag.

16 Vitrification renders the material  
17 inert. In a chemical process using heat, it  
18 transforms the mixture into a soluble liquid which  
19 solidifies when cooling. Because slag is  
20 vitrified, it is very durable and an  
21 environmentally stable material that permanently  
22 immobilizes its chemical constituents in a glassy

1       amorphous which remains stable, even when broken  
2       in small fragments during abrasive blasting, as  
3       evidenced by x-ray diffraction and TCLP data.

4               Because it is beneficially reused,  
5       boiler slag is not commonly stored in surface  
6       impoundments. We regularly test our boiler slag  
7       and it has always passed TCLP testing and has  
8       never exhibited any hazardous waste  
9       characteristics. Our testing of pre- and  
10      post-blast boiler slag, an EPA standard TCLP test,  
11      has confirmed that the resulting leachate meets  
12      drinking water standards.

13             The scientific information about boiler  
14      slag and its physical properties have not changed  
15      since we began our operations more than 70 years  
16      ago. Regulating boiler slag destined for disposal  
17      as a special waste under Subtitle C would unfairly  
18      stigmatize beneficially reused boiler slag, as is  
19      already evident by competitor actions. We have  
20      seen no evidence that boiler slag meets any  
21      threshold or regulation under Subtitle C, and we  
22      are not aware of any environmental problems linked

1 to our products.

2 As an abrasive, we are the primary  
3 alternative to silica sand, an abrasive that  
4 presents serious worker health concerns. We  
5 recognize the need for proper environmentally  
6 sound standards regulating the small percentage of  
7 boiler slag that is discarded rather than  
8 beneficially reused.

9 Accordingly, consistent with the amounts  
10 used of nearly 30 states and EPA's two previous  
11 determinations evaluating proper management of  
12 coal combustion by-products, we support  
13 appropriate and reasonable disposal standards for  
14 any waste boiler slag under Subtitle D of RCRA.  
15 Thank you.

16 MR. DELLINGER: Thank you. Would  
17 Numbers 9, 10, 11, 12, and 13 please come forward.  
18 Number 9.

19 SPEAKER: Good morning, panel. My name  
20 is John Rath. I'm a dad. I'm a citizen in this  
21 local area. I'm an environmental activist. And  
22 I'm honored to be a member of the Lone Star Sierra

1 Club chapter which covers Texas and surrounding  
2 states. I represent about 30,000 members, six to  
3 7,000 of those being in the Dallas-Fort Worth  
4 area. I want to thank you for being here, for  
5 listening to us, and for the leadership that  
6 you've shown on a number of environmental issues  
7 over the past couple years.

8 The Sierra Club strongly, strongly  
9 supports Subtitle C of RCRA for coal ash regulations, I  
10 think, for the following reasons. Number one, the  
11 categorization, on a national level, consistent  
12 across all states, being hazardous waste; the  
13 federally enforceable standards that are  
14 consistent across the United States; the coal ash  
15 pond phaseout; the national minimum standards  
16 addressing contamination from oil drums; and  
17 cradle-to-grave management. Those are things that  
18 are very, very important, in our opinion, to  
19 properly regulate coal ash, which is toxic.

20 I love to hear all the statistics being  
21 thrown at you. I'll let you be the judge of  
22 whether or not they're toxic. I think with your

1 energy and initiatives to prioritizing the safety  
2 of our citizens, I have no doubt that our safety  
3 will be guarded by your decisions. Thank you very  
4 much. Again, please -- please adopt Subchapter C.  
5 Thank you.

6 MR. DELLINGER: Thank you. Number 10.

7 SPEAKER: Good morning, and thank you  
8 for the opportunity to address this important  
9 issue. My name is Michael Brune. I'm the  
10 executive director of the Sierra Club, the  
11 nation's largest and oldest grassroots  
12 environmental organization. I'm here today to  
13 urge EPA to approve the rule that will ensure that  
14 the by-products of burning coal is handled like  
15 the toxic substance that it is.

16 Toxic coal ash poses serious risks to  
17 human health and the environment. Given the  
18 severity of these risks, enforceable federal  
19 safeguards, not suggested state guidelines, are  
20 necessary to protect our communities. Both EPA  
21 and the National Academy of Sciences have years  
22 of research showing that toxic coal ash is



1       becoming increasingly toxic. The hundreds of  
2       toxic coal waste dumpsites across the country pose  
3       very real threats to the health of millions of  
4       people living in communities near those sites.

5               For decades, the coal industry has told  
6       the American people that coal ash is safe, just  
7       like tobacco executives told Americans that  
8       cigarettes don't cause cancer, just like the auto  
9       industry told us that installing catalytic  
10       converters would wreck the industry.

11              If these examples and the BP oil  
12       disaster and the Tennessee coal ash disaster have  
13       taught us anything, it's just that we can't take  
14       polluters' word for granted anymore. Coal ash  
15       contains a long list of dangerous toxins,  
16       including arsenic, selenium, lead, and mercury.  
17       These heavy metals have been linked to organ  
18       disease, cancer, respiratory illness, neurological  
19       damage, and developmental problems. Do we really  
20       want these chemicals in our water supply?

21              Despite coal ash's dangerous  
22       characteristics, it is currently less strictly

1 controlled than household garbage. That's right.  
2 Coal ash is contaminated with dozens of chemicals  
3 known to cause serious harm to people and the  
4 environment, and it's treated with no more care  
5 than an empty bag of pretzels.

6 Clearly, our current state standards are  
7 inadequate. This is why we're here today. It's  
8 why there are hundreds of people turning out at  
9 every hearing on this issue across the country.  
10 That's why you will receive hundreds of thousands  
11 of comments over the next several months.

12 We need EPA, we're counting on EPA, to  
13 protect the quality of our air, our water, and our  
14 communities. Effective coal ash regulations must  
15 require basic protections for communities, such as  
16 composite liners, water runoff chemicals,  
17 groundwater monitoring, and financial assurance  
18 that companies pay to clean up what they pollute.

19 Again, I want to thank you for the  
20 opportunity to speak about this issue. I just  
21 wanted to say that coal ash is toxic. It's  
22 hazardous. It's poisonous. Please regulate it as

1       such. Please adopt Subtitle C. Thank you.

2               MR. DELLINGER: Number 11.

3               SPEAKER: Good morning. My name is  
4       Kevin Walgenbach. I'm the director of Government  
5       Affairs for the National Ready Mixed Concrete  
6       Association. On behalf of NRMCA, I would like to  
7       thank the EPA for conducting this listening  
8       session on this very important issue.

9               As a matter of scale, ready mixed  
10       concrete consumes 75 percent of all portland  
11       cement used in this country. We represent over  
12       1,500 concrete producers and 50 state-affiliated  
13       organizations. Concrete is the most widely used  
14       construction material in the world and is produced  
15       and consumed in every congressional district in  
16       our country.

17              With regard to fly ash, a major portion  
18       of coal combustion residuals, the ready mixed  
19       concrete industry is the largest beneficial user.  
20       Surveys of ready mixed concrete producers show  
21       that over 55 percent of all ready mixed concrete  
22       contains fly ash.

1           Fly ash is used in combination with  
2     portland cement to impart the following benefits  
3     to concrete: Increased durability and service  
4     life of structures; reduction in waste sent to  
5     landfills; reduction in raw materials extracted,  
6     energy for production, and air emissions,  
7     including CO<sub>2</sub>; and lower concrete material cost.

8           While the concrete industry currently  
9     uses about 15 million tons of fly ash annually, it  
10    is estimated that the concrete industry can  
11    increase its current use to more than 30 million  
12    tons per year by 2020, resulting in less fly ash  
13    going to landfills, and reducing the concrete  
14    industry's carbon footprint by 20 percent.

15          Based on the concrete industry's  
16    extensive use of and reliance on fly ash in  
17    concrete, and after examining EPA's proposed rule,  
18    NRMCA has determined the RCRA Subtitle C  
19    designation for CCRs bound for disposal, while  
20    retaining exemptions for beneficial use, will lead  
21    to the following unintended consequences for the  
22    concrete industry: One, an increase in production

1 costs and the cost of construction; two, an  
2 increase in potential liability for concrete  
3 producers.

4 Currently, the regulatory status of  
5 small amounts of fly ash in waste streams from  
6 concrete production and construction is unclear.  
7 Any proposed rule should explicitly state that  
8 such small waste streams from the concrete  
9 industry are exempt and not subject to such  
10 regulations. There will also be litigation which  
11 will target existing structures built with fly ash  
12 concrete.

13 Three, potentially stricter state laws  
14 impacting beneficial use. For example, a proposed  
15 rule in the state of Maryland states that any  
16 product containing fly ash is to be disposed of in  
17 a special facility authorized to accept fly ash.  
18 More states will inevitably establish similar  
19 laws.

20 Four, the potential elimination of fly  
21 ash concrete. Hazardous waste stigma and fear of  
22 liability will drive specifying engineers,

1 architects, and end users to disallow the use of  
2 fly ash in concrete. For example, the Los Angeles  
3 Unified School District has banned the use of fly  
4 ash until the EPA has finalized its decision.

5 Lastly, five, there will be a drastic  
6 reduction in the durability of our nation's  
7 infrastructure if fly ash in concrete is  
8 disallowed. Thank you for hearing my concerns on  
9 behalf of the ready mixed concrete industry.

10 MR. DELLINGER: Thank you. Number 12.

11 SPEAKER: Good morning. I'm Rose Mary  
12 Crawford from Shawnee, Oklahoma. In February of  
13 2009, I agreed to assist the residents of Bokoshe  
14 with finding their voice and having it heard, so  
15 that people would be educated to the conditions  
16 that they're living in in Bokoshe.

17 When Making Money Having Fun proposed a  
18 fly ash pit, Bokoshe residents were very concerned  
19 about the impact that the fly ash pit would have  
20 on their water. Making Money Having Fun sent a  
21 letter saying that federal and state laws were  
22 very clear as to the prevention of the

1       contamination of groundwater and surface water and  
2       the runoff entering into the natural streams.

3               That seemed to not be true, because in  
4       2004 the Department of Mines and the Oklahoma  
5       Corporation Commission let the Making Money Having  
6       Fun company deposit water from oil and gas wells  
7       into the fly ash pit. The conditions were that  
8       the water was running off the fly ash pit  
9       continuously, yet the Oklahoma Department of Mines  
10      inspector went out, month after month, and  
11      reported that there was no water leaving the site,  
12      which wasn't true.

13             The state agencies ignored us until  
14      October of 2009. We went to a public meeting of  
15      the Water Quality Advisory Council, which is part  
16      of the ODEQ. They met us at the door and they  
17      stated to us, "We know who you are, we know what  
18      you want, and we can't help you." However, we had  
19      a local TV station coming to report on what we  
20      were to say to -- Bokoshe residents were going to  
21      say to the ODEQ. So they decided that they could  
22      speak. The good part of that is that they did

1       listen.

2               The next morning they had a meeting.  
3       The executive director had a meeting with the head  
4       of the water department, and they made a decision  
5       that what they could do for Bokoshe is call the  
6       EPA, which they did.

7               And Kent Sanborn did come out, he did an  
8       investigation, and he did find that Making Money  
9       Having Fun was violating the Clean Water Act.  
10      December 10, 2010, the EPA issued a cease and  
11      desist order.

12              We have -- our law enforcement's calling  
13      you, and we need help. That's one of the reasons  
14      why we're asking. Our system seems to be so  
15      broken that even our regulators call for you.

16              So we're asking you to pass Subtitle C  
17      and to quickly move forward to regulation to --  
18      regulations for disposal of fly ash in lime pits.  
19      Thank you very much.

20              MR. DELLINGER: Thank you. Number 14.

21              SPEAKER: I'm Jean McMahon. I live in  
22      Fort Gibson, Oklahoma. I want to thank the EPA



1       for being here.

2                   In listening to the industry talk, I  
3       think Ms. Jackson's got a hard time ahead of her  
4       because it sounds like James Inhofe talking about  
5       CO2. He's got all kinds of scientists, like two,  
6       who will say greenhouse gases don't cause global  
7       warming, but that's all the media will play.  
8       There are like 3,000 scientists who can prove  
9       otherwise. So it's a problem with the media and  
10      who's got the power. So I'm glad you're listening  
11      to the people. I hope that you decide to make --  
12      to rule that coal ash is a hazardous substance, so  
13      it will be more -- so it will be monitored, at  
14      least.

15                  My first concern with the coal ash was  
16      back when I went through Tennessee and I saw -- I  
17      had heard and seen about the rivers of  
18      coal-polluted ash going through the countryside.  
19      When I drove, I saw little spots of, looks like  
20      ash, and I said, oh, I guess that's how they get  
21      rid of it. You think, okay, now the government's  
22      going to do something; we're going to take care of

1       this stuff; this isn't going to happen again. And  
2       nothing's happened.

3               Then, in my hometown of Fort Gibson,  
4       they had a newspaper article, "Expert: Fly Ash  
5       Dump Could Be a Problem." There is a cement  
6       company who takes the coal ash from Muskogee coal  
7       plant by -- and that plant's really old. It's  
8       been there since 1930. So I went there. This is  
9       some of the junk that comes down from the -- they  
10      put the waste in these caves, and it's elevated.  
11      It's elevated, and it goes into the river. And  
12      the river is where Fort Gibson gets their water.

13             It's one thing when you hear about it,  
14      but when it happens to you, you say somebody is  
15      there watching out. But guess what? Nobody is.  
16      Oklahoma is not going to do it. You can't do it  
17      state by state. Oklahoma won't regulate mercury.  
18      They're waiting for the feds to do it.

19             All our lakes have a problem with  
20      mercury contamination, and people -- pregnant  
21      women don't know that. There are a lot of  
22      children with mental disabilities. Mercury causes

1       that.   Thank you.

2               MR. DELLINGER:   Number 14.

3               SPEAKER:   My name is Harlan Hentges.

4       I'm a lawyer for the town of Bokoshe, population  
5       450.   Please hear today two messages from Bokoshe.  
6       The first message is that state regulation has  
7       failed due to dishonesty.   With regard to Bokoshe,  
8       state regulators say no fly ash or water can be  
9       seen leaving the site, when, in fact, fly ash and  
10      water are obviously leaving the site.   Regulators  
11      say, this is mine reclamation, when clearly, this  
12      is fly ash disposal.   This is a surface  
13      impoundment.

14              These dishonest statements give state  
15      agency directors an excuse to allow the illegal  
16      dumping to continue.   They let the dumping  
17      continue due to pressure from elected officials.  
18      And the elected officials apply that pressure to  
19      satisfy industry campaign donors.

20              The regulation of fly ash has become a  
21      matter of politics.   This situation has created a  
22      deeply personal, difficult, and uphill battle for

1       the people of Bokoshe. Frankly, you can't do much  
2       to help.

3               But the one thing EPA can do is treat  
4       fly ash the same as it treats other hazardous  
5       waste. Apply the well-established regulations of  
6       Subtitle C and do not leave us with subjective,  
7       vague, and virtually unenforceable state  
8       regulations that we have now.

9               The second message from Bokoshe is do  
10       not let beneficial use become an exception that  
11       swallows the rule. In Bokoshe, we know how  
12       industry misuses the term "beneficial use." When  
13       industry talks about beneficial use in Bokoshe, it  
14       means dumping oil and gas wastewater into fly ash  
15       and building a 20-acre mound of fly ash 55 feet  
16       high. This is what industry means in Bokoshe when  
17       it says beneficial use.

18              Now, we know there are legitimate uses  
19       of fly ash, but recognizing that fly ash is  
20       hazardous won't change those uses. The energy  
21       industry specializes in selling extraordinarily  
22       dangerous products directly to consumers.

1     Electricity, natural gas, and gasoline can  
2     accidentally kill you in an instant in a ball of  
3     fire.

4             In contrast, fly ash only has the  
5     potential to kill you slowly over a long period of  
6     time. The energy industry should not have a  
7     problem selling fly ash as a product, even if EPA  
8     requires that fly ash be disposed of properly when  
9     it is a waste -- a hazardous waste.

10            On behalf of the town of Bokoshe and its  
11     450 residents, we strongly urge EPA to strictly  
12     define beneficial use and apply Subtitle C  
13     regulations. Thank you.

14            MR. DELLINGER: Thank you. Number 15.

15            SPEAKER: Good morning. My name is  
16     David Miller. And I'm a manager in the  
17     environmental services division of American  
18     Electric Power. AEP ranks among the nation's  
19     largest generators of electricity, owning nearly  
20     38,000 megawatts of generating capacity in the  
21     U.S. and serving approximately 5.2 million  
22     customers throughout AEP's eleven states service

1       territory. AEP operates a significant number of  
2       CCR disposal facilities in a manner that we  
3       strongly believe is protective of both public  
4       safety and the environment. AEP and our customers  
5       will be directly impacted by the final CCR rules.

6               AEP supports the development of federal  
7       regulations for CCRs under RCRA's Subtitle D  
8       non-hazardous waste program. AEP believes the  
9       Subtitle D prime option, if revised appropriately,  
10      would be the best path forward and establishes an  
11      environmentally protective program without  
12      destroying CCR beneficial use and imposing  
13      unnecessary regulatory cost on power plants,  
14      threatening jobs, and increasing electricity costs  
15      for our customers.

16             The Subtitle D prime option is preferred  
17      because it would not require automatic closure of  
18      CCR service impoundments that are operating in a  
19      manner that is fully protective of human health  
20      and the environment. AEP agrees that disposal  
21      units that are not fully protective must either be  
22      upgraded or closed. However, there are many CCR

1       service impoundments which are perfectly safe and  
2       protective of the environment. There is no reason  
3       why these units should not be allowed to continue  
4       operating.

5               AEP strongly opposes the regulation of  
6       CCRs as hazardous waste under Subtitle C of RCRA.  
7       Even though CCRs would be labeled special wastes  
8       as proposed, EPA openly admits that CCRs special  
9       waste would be subject to full hazardous waste  
10      controls just like any other listed waste. AEP  
11      believes regulating CCRs as a hazardous waste  
12      would essentially end CCR beneficial reuse.

13             In a letter to the EPA administrator  
14      dated December 22nd, 2009, ASTM International  
15      stated, we strongly encourage the EPA to consider  
16      the negative implications of classifying fly ash  
17      as a hazardous waste under Subtitle C of Resource  
18      Conservation Recovery Act. Designation of fly ash  
19      as a hazardous waste will require the ASTM  
20      standard for use of fly ash in concrete be revised  
21      to reflect this classification.

22             A hazardous waste designation, even with

1     an exclusion for beneficial use, would cause the  
2     ASTM standard for fly ash to be removed from  
3     project specifications due to concerns for legal  
4     exposure, product liability, and public  
5     perception. This will likely result in little or  
6     no fly ash being used for beneficial use in  
7     concrete or other applications that supports the  
8     sustainability objectives, end of quote.

9             In addition, AEP has ash disposal  
10    facilities that do not meet the current siting  
11    criteria for hazardous waste disposal facilities  
12    and, therefore, would not be able to continue to  
13    receive CCR should EPA choose to regulate CCRs as  
14    a hazardous waste under Subtitle C of RCRA. The  
15    power plants that these facilities serve would  
16    have to transport CCRs great distances to  
17    locations that meet the hazardous waste disposal  
18    facility siting criteria or commercial facilities.  
19    There is much concern that sufficient commercial  
20    hazardous waste landfill capacity wouldn't be  
21    available and be depleted quickly. This would  
22    dramatically increase disposal costs in our



1 customers' electricity rates without environmental  
2 benefit. Thank you.

3 MR. DELLINGER: Thank you. Number 16.

4 SPEAKER: Good morning. I'm Linda  
5 Whelan, senior director of energy and  
6 environmental policy for Dynegy. Dynegy produces  
7 and sells electric energy in the Midwest,  
8 Northeast, and West Coast. Dynegy's power  
9 generation portfolio includes over 3,650 megawatts  
10 of coal-fired generation, which we -- which will be  
11 subject to EPA's final CCR rule. Dynegy supports  
12 the federal regulation of CCRs, and urges EPA to  
13 adopt a rule that will be protective of human  
14 health and the environment and that does not  
15 unduly burden the economy or threaten jobs in  
16 electrical liability.

17 EPA proposed just such an approach in  
18 either the proposed RCRA Subtitle D or D prime  
19 non-hazardous programs. Dynegy's concern is that  
20 EPA has also proposed a very burdensome and costly  
21 approach that the agency appears to favor, mainly  
22 RCRA Subtitle C regulation as hazardous waste.

1 Dynegey opposes Subtitle C's regulation of CCRs.

2 EPA itself has publicly stated there is  
3 no difference in the storage and disposal  
4 requirements under proposed Subtitle D  
5 non-hazardous and proposed Subtitle C hazardous  
6 waste approaches, yet EPA continues to advocate  
7 the Subtitle C approach, even though it will have  
8 the negative consequences of imposing tremendous  
9 additional costs upon the industry, increasing the  
10 cost of power to consumers, causing significant  
11 job losses, and destroying the beneficial use of  
12 coal ash through the stigma and liability concerns  
13 of regulating CCRs as hazardous.

14 The EPA stated reason for favoring the  
15 Subtitle C hazardous approach is concern regarding  
16 enforcement capabilities, yet federal regulation  
17 of CCRs as non-hazardous provides extensive  
18 enforcement avenues. First, most states already  
19 have robust regulatory programs that apply to CCR  
20 management. Many states are likely to adopt  
21 Subtitle D requirements. Even in the absence of a  
22 state program, CCR facilities must meet Subtitle D

1 requirements. They are not optional,  
2 unenforceable guidelines.

3 Two, RCRA Section 7002 requires that any  
4 person, including states, can bring a civil  
5 enforcement action against any facility for  
6 violating any Subtitle D requirement. EPA has  
7 also proposed the extensive public release of CCR  
8 inspection and monitoring data to further enable  
9 this provision.

10 Three, under RCRA 7003, EPA can also  
11 enforce Subtitle D requirements whenever a CCR  
12 facility may present an imminent and substantial  
13 danger to health or the environment. The  
14 threshold for EPA to abuse this authority is low  
15 as the courts have interpreted RCRA 7003 broadly.

16 And four, to ensure compliance of CCR  
17 operations, EPA also has separate enforcement  
18 authority under the federal Clean Water Act, as  
19 does the office of surface mining under the  
20 federal Surface Mining and Reclamation Enforcement  
21 Act.

22 In closing, Dynegy supports the federal

1 regulation of CCRs as non-hazardous waste. Thank  
2 you.

3 MR. DELLINGER: Thank you. Number 17.

4 SPEAKER: Good morning, ladies and  
5 gentlemen. My name is Matt Skinner with GSE  
6 Lining Technology, a company based in Houston,  
7 Texas. Today I'm representing the Geosynthetics  
8 Materials Association, a trade group of 80  
9 companies that manufacture, distribute, and  
10 install geosynthetic materials, including liner  
11 systems. The industry employs 12,000 people  
12 throughout the United States.

13 Our comment to EPA is very simple. We  
14 request that EPA mandate the geosynthetic lining  
15 of coal ash storage facilities using composite  
16 liner systems. In the shortest terms, use liners,  
17 specifically composite liners. Why? Because they  
18 work. Concerns of safety regarding CCRs are  
19 mitigated if the landfill storage sites are lined  
20 with a composite liner system of a geomembrane and  
21 a geosynthetic clay liner. A composite liner  
22 system prevents the leachate from entering the

1 environment. Safety concerns regarding surface  
2 impoundments are also mitigated if the  
3 impoundments are lined with a composite liner  
4 system.

5           The American Society of Civil Engineers  
6 does a regular report card on America's  
7 infrastructure. For the last three report cards  
8 representing over a decade, solid waste has  
  
9 received the highest grade of any category. My  
10 industry does a great job of taking America's --  
11 treating America's waste, taking care of it  
12 properly and storing it, and protecting the  
13 environment. The materials, technology, and  
14 people exist. The engineers, engineering  
15 techniques, and standards the general contractors  
16 and installers who can build the proper  
17 facilities, and the regulators and inspectors who  
18 assure the work is done correctly. We urge EPA to  
19 use what exists and what is working today.

20           Further, our industry has continuously  
21 improved over time, and EPA has been a significant  
22 part of that effort. Over the years, EPA has

1        commissioned nearly 80 studies of the design and  
2        performance of lining systems. We specifically  
3        call your attention to a 2002 study titled:  
4        Assessment and Recommendations for Optimal  
  
5        Performance of Waste Containment Systems. That  
6        study contains a great deal of pertinent  
7        information on how to construct containment  
8        systems. Most illustrative for today is a graph,  
9        which I'll provide for your review, charting the  
10       leakage rate of different designs over the life  
11       cycle of nearly 200 facilities. The composite  
12       liner system of a geomembrane and geosynthetic  
13       clay liner was demonstrated to have the lowest  
14       leakage rate over all life cycle stages including  
15       a near zero leakage rate after the facilities were  
16       closed and final cover placed. Our materials  
17       work.

18                    Use of composite liner system will  
19       achieve the EPA's mission to protect human health  
20       and environment for all Americans. A brief word  
21       on the hazardous versus non-hazardous question.  
22       While coal ash does contain heavy metals, it lacks

1 the traditional characteristics of hazardous  
2 materials, radioactivity, or the presence of  
3 infectious medical waste, et cetera. In the  
4 opinion of our trade organization, coal ash can be  
5 properly stored using Subtitle D regulations, a  
6 non-hazardous solid waste designation with  
7 composite liner systems. Thank you.

8 MR. DELLINGER: Thank you. Number 18.  
9 And while Number 18 is moving to the podium, could  
10 Numbers 19, 109, 201, and 22 move forward.

11 SPEAKER: Good morning. My name is  
12 Edward Kahl. And I'm a general executive, coal  
13 combustion products for Ameren Corporation.  
14 Ameren will be directly impacted by the final coal  
15 combustion residual rule and very much appreciates  
16 the opportunity to be here today and speak on this  
17 proposal. Ameren is an investor-owned utility  
18 based in St. Louis, Missouri that operates eleven  
19 coal-fired power plants in the states of Missouri  
20 and Illinois. And as a consequence, generates  
21 over two million tons of coal combustion products  
22 each year. Ameren is a member of the Utility

1       Solid Waste Group and American Coal Ash  
2       Association. And we support the comments provided  
3       by both of those organizations.

4               I have direct experience, knowledge, and  
5       responsibility in the beneficial utilization of  
6       coal combustion products. Over the past ten  
7       years, Ameren has developed a robust CCP recycling  
8       program. For example, we found so many uses in  
9       the years 2007 and 2008 that we were able to  
10      beneficially recycle more than 100 percent of what  
11      we produced. This was only possible because we  
12      were able to reclaim past production and use it.

13             In 2009, the amount of ash recycled  
14      dropped to 70 percent. And the projections for  
15      2010 is around 42 percent. Certainly, the  
16      reduction in our ability to recycle CCPs  
17      beneficially is a reflection of the poor state of  
18      the economy.

19             However, since the issuance of the EPA's  
20      proposed rule that seeks to regulate CCRs, I have  
21      fielded a number of phone calls from current users  
22      questioning the ability to use CCPs. I witnessed



1       anxious citizens challenging the permitting of a  
2       state-of-the-art landfill for CCPs. And I  
3       attended a Corps of Engineers public meeting where  
4       citizens groups refuted the Corps of Engineers'  
5       ability to use encapsulated CCPs to strengthen a  
6       levee system. The stigma created by the EPA  
7       proposed rule and threat of a hazardous  
8       classification has already created serious  
9       negative business implications. This stigma is  
10      real for me.

11               Further, I want to state our strong  
12      opposition to the Subtitle C opposite -- option.  
13      I agree with the views of a bi-partisan group  
14      comprised of 165 members of Congress, 45 U.S.  
15      Senators, virtually all the states, other federal  
16      agencies, municipal and local governments, CCP  
17      marketers, beneficial users, unions, state  
18      agencies, and many third-parties which have  
19      maintained that regulating CCPs under RCRA's  
20      hazardous waste program is simply regulatory  
21      overkill that would severely cripple the CCP  
22      beneficial use industry.

1                   After reviewing the eight Bevill study  
2       factors, I have concluded that there is simply no  
3       reason to -- to pursue this approach when other,  
4       better options offer the same degree of protection  
5       without the fears that result from regulating CCPs  
6       under Subtitle C. Thank you very much.

7                   MR. DELLINGER: Thank you. Number 20.  
8       I'm sorry. 109. Excuse me, Number 109. No 109.  
9       Number 201.

10                  SPEAKER: Good morning. My name is Tom  
11       Zorenda. And a lot has already been said --  
12       probably most of it has been said -- but I drove  
13       over here in this rain, and I'm going to get my  
14       words in.

15                  I just want to say that I'm a husband  
16       and father of two, chemical engineer, and worked  
17       in the hazardous waste industry for ten years.  
18       And I have a lot of sympathy for the people of  
19       Kingston, Tennessee, and also what we heard this  
20       morning in Oklahoma. I think it's an illustration  
21       that there has been some negligence from a  
22       standpoint of storage of this material. And I

1 believe that the agency is working very well to  
2 provide two good options to -- to address that  
3 issue.

4 But my concern is that we may throw the  
5 baby out with the bath water. And there are some  
6 facts that people should know who are sitting here  
7 today that the EPA has very stringent testing on  
8 determining whether material is hazardous or not.  
9 And there's characteristic waste and there are  
10 listed waste. And now we're in a new area called  
11 special waste. I'm not sure what that means. But  
12 for people not familiar with that, this -- these  
13 materials are not classified as hazardous or  
14 toxic. We've heard people say that. These are --  
15 these are non-hazardous materials, but when  
16 they're not stored properly, you can see what  
17 happens. So we do need to do something  
18 differently on storage.

19 And I believe that the Subtitle D option  
20 really addresses what the country needs from a  
21 standpoint of making sure these materials are  
22 safely stored, but not creating a hazardous stigma

1       which will really undo much of the good that's  
2       been done in having these materials used usefully  
3       back in industry.

4               And we heard about the Bevill amendment.  
5       And while that's still going to be intact, it  
6       doesn't do enough. And you know, we're a  
7       litigious society. We've got a lot of lawyers out  
8       there. And you know what's going to happen if we  
9       try to use in beneficial uses a non-haz material  
10      that's being called hazardous by our government,  
11      we're going to -- we're going to see a lot of  
12      people just back away. The producers of this  
13      material are going to say, you know what, it's  
14      just going to be a lot cheaper if we don't let the  
15      recycling happen. We don't want that material to  
16      get back into the system. So we have to be very  
17      careful in creating this stigma.

18              So what I would recommend is that we go  
19      ahead with the Subtitle D option, which ensures --  
20      as we heard from our commercialized guy back there  
21      with the liner -- put them in the proper landfill  
22      so it's not dusting and it's properly captured.

1 But still, let the material go back into reuse  
2 which has been, like somebody mentioned, a really  
3 good example of how when industry puts their mind  
4 to it, we can recycle materials. A very good  
5 program. So thank you for your time. And thank  
6 you for this opportunity, I really appreciate it.

7 MR. DELLINGER: Thank you. Number 19.  
8 Number 19.

9 SPEAKER: I'm Ed Watson, senior vice  
10 president of production for Acme Brick Company.  
11 Acme is based in Fort Worth, Texas, and has clay  
12 brick and concrete manufacturing facilities  
13 located in seven states, most in the south central  
14 United States. Acme has direct sales distribution  
15 in four additional states. Our total employee  
16 head count exceeds 3,000 during normal economic  
17 times. I appreciate this opportunity to address  
18 this public hearing and to provide comments  
19 regarding Acme's utilization of coal combustion  
20 residuals in our manufacturing process.

21 Acme has successfully incorporated  
22 bottom ash and fly ash as a substitute for other

1 raw materials in the body of our finished product  
2 for over 25 years. In the case of clay brick  
3 manufacturing, we've utilized bottom ash produced  
4 at four different coal-fired generation plants, as  
5 a substitute for raw clay at six of our 24 brick  
6 plants. Bottom ash is an excellent body additive  
7 that helps to stabilize the shrinkage of the brick  
8 body and assist in the -- in the drying and firing  
9 stages of the brick manufacturing process. And it  
10 helps to lower the consumption of fuel used to  
11 fire the brick.

12 One of our largest plants, which employs  
13 close to 100 employees, has successfully -- was  
14 unsuccessful in making a durable fired brick until  
15 we incorporated bottom ash in 1986. If bottom ash  
16 were not available, we'd be required to mine  
17 additional raw clay and fire it in a rotary kiln  
18 to produce a calcined material for use. Over the  
19 course of the past 24 years, a single Acme plant  
20 has produced over 2 billion face brick; thereby --  
21 and has consumed approximately 640,000 cubic yards  
22 of bottom ash; thereby conserving that same volume

1 of virgin raw materials and millions of cubic feet  
2 of natural gas. Our utilization of this raw  
3 material also means that the power company is not  
4 required to dispose of the same volume in a  
5 landfill.

6 In addition to the preceding example,  
7 Acme consumes significant volumes of bottom ash  
8 and fly ash at our seven concrete block plants.  
9 Bottom ash can be used as a replacement for other  
10 virgin raw materials, such as sand, gravel, or  
11 exposed -- or expanded lightweight aggregate. And  
12 fly ash can be substituted for a high percentage  
13 of portland cement used in manufacturing of CMUs.  
14 During the -- the process, CCRs are incapsulated  
15 in the body of the product. We're not aware of  
16 any issues with brick or block containing CCRs  
17 having any hazardous characteristics. This means  
18 that there are no known hazards associated with  
19 the use of products which have been manufactured  
20 using CCR.

21 We're supportive of the adoption of  
22 Subtitle D for this regulation. If industry were

1     able to utilize CCRs and overcome potential market  
2     impacts associated with using waste designated  
  
3     under Subtitle C, would likely require consumers  
4     to implement stringent controls, governing  
5     disposal, transportation, and so forth of this  
6     material. The actual planning and direct  
7     implementation of solid waste programs under  
8     Subtitle D remains a state and local function.  
9     This approach allows states to devise programs to  
10    deal with site-specific conditions and needs.  
11    Acme believes this arrangement is preferred over  
12    stronger federally controlled programs that cannot  
13    effectively deal with the matters specific to  
14    state and local conditions. Thank you for hearing  
15    my comments.

16               MR. DELLINGER: Thank you. Number 22.  
17    Is Number 109 in the room? Can you come forward,  
18    please?

19               SPEAKER: Good morning. My name is Mike  
20    Kezar. I'm the general manager of San Miguel  
21    Electric Cooperative, a rural electric cooperative  
22    generation facility located in south Texas. San



1 Miguel generates power for the benefit of its  
2 member cooperatives who serve approximately  
3 570,000 end user member owners in 114 Texas  
4 counties. The San Miguel facilities were  
5 constructed in the late 1970's during a time when  
6 public policy favored the use of coal for  
7 generating electricity. And San Miguel's members  
8 invested significant resources into the generating  
9 plant and related facilities, including the  
10 adjacent surface mine.

11 As a not-for-profit cooperative, those  
12 member owners bear all of the costs of owning and  
13 operating the San Miguel facilities, including the  
14 costs associated with regulations such as the CCR  
15 rule currently proposed by the EPA. San Miguel is  
16 willing to support the development of federal  
17 regulations for CCRs under RCRA's Subtitle D  
18 non-hazardous waste program. Furthermore, we  
19 believe that the Subtitle D prime option is the  
20 best -- best pass forward. And the states should  
21 be allowed to take the lead in the implementation  
22 of the program.

1           San Miguel is opposed to using the  
2     Subtitle C approach. Proposed controls for CCRs  
3     are virtually identical under the C and D  
4     approaches, and they would be expected to provide  
5     the same levels of protection. However,  
6     regulating coal ash under the hazardous waste  
7     rules, would impose unnecessary regulatory costs  
8     on power plants like San Miguel, threatening jobs  
9     and increasing electricity rates.

10           As previously stated, San Miguel's  
11    member owners, the predominantly rural end of the  
12    line users of electricity, bear the cost of owning  
13    and operating the facilities. And any increase in  
14    a regulatory cost will go directly to the rates  
15    they pay for electricity.

16           In conclusion, we agree with the many  
17    others who are already on record as opposing the  
18    Subtitle C approach. We have maintained that  
19    regulating CR -- CCRs under RCRA's hazardous waste  
20    program is simply regulatory overkill. There is  
21    just no reason to pursue this approach when the  
22    Subtitle D prime option in coordination with state

1 programs offers the same degree of protection  
2 without the attendant risks and burdens of  
3 Subtitle C. Thank you.

4 MR. DELLINGER: Thank you. Numbers 23,  
5 24, 25, 202 and 27 come forward. Number 23,  
6 please.

7 SPEAKER: I am Diane Reece. I teach  
8 kindergarten in the morning, fifth and sixth grade  
9 science in the afternoon at Bokoshe. In 2000, I  
10 took a petition around our town protesting the  
11 dumping of fly ash in our community. The pit was  
12 just one-half mile from my home and 1.5 miles from  
13 our school. I was concerned about the dust and  
14 the potential health problems. I exercise by  
  
15 riding a bike and walking the same path that the  
16 treks (sic?) would take.

17 Despite our protest, the Department of  
18 Mines issued the permit. I decided to trust them  
19 to protect us and I thought that fly ash was safe.  
20 I was so very wrong. For the next eight years,  
21 plumes of fly ash were visible for miles, and the  
22 Department of Mines did nothing. The Department

1 of Mines has not assessed the health risk created  
2 by the fly ash. In 2002, I was diagnosed with  
3 colon cancer. I had one-third of my colon  
4 removed. My neighbor who rode bikes with me died  
5 of breast cancer. I continued to exercise. I was  
6 diagnosed with breast cancer in 2007. I had a  
7 lumpectomy, chemo, and 25 treatments of radiation.  
8 Two years ago, a friend who walked with me died of  
9 lung cancer. And last year, my next-door neighbor  
10 was diagnosed with non-Hodgkin's lymphoma. Last  
11 week, I heard about another neighbor that had  
12 breast cancer. There are fifteen with serious  
13 health problems within a mile of that pit.

14 At school, 9 out of my 17 sixth graders  
15 have asthma. Since kindergarten, these children  
16 have attended school 1.5 miles from the fly ash  
17 pit. Bokoshe has a child fighting for his life  
18 with leukemia and his second bone marrow  
19 transplant right here in Texas. He has asked his  
20 mother if he is going to die. He's only 7 years  
21 old.

22 There are 450 people in the town of

1       Bokoshe. The number of health problems is  
2       unusually high. And when the Department of Mines  
3       approved the fly ash pit, I thought they would  
4       take care of us and tell us if fly ash was causing  
5       a problem. I've learned over the last 8 years  
6       that the Department of Mines does not have any  
7       idea what fly ash is doing to Bokoshe. The state  
8       regulatory agencies have failed us. And as a  
9       two-time cancer survivor, I can't afford much more  
10      failure.

11               On behalf of myself, my students, and my  
12      community, I'm asking you to regulate fly ash  
13      under Subtitle C and impose strict and enforceable  
14      rules on the handling of this dangerous waste.  
15      Thank you.

16               MR. DELLINGER: Thank you. Number 24.

17               SPEAKER: Hi, I'm Molly Rooke. And I'm  
18      representing the Sierra Club. I live here in  
19      Dallas. And I will be providing some additional  
20      talking -- some additional remarks, and I have  
21      some additional personal remarks that I will  
22      provide in writing later.

1           The Sierra Club applauds the stronger  
2     Subtitle C option for the regulation of coal ash  
3     because we need strong federally enforceable  
4     standards, not state guidelines. In Texas, we  
5     would especially be in fear of any weak state  
6     guidelines because that would be the best we could  
7     ever hope for. We need to protect our health and  
8     communities from the very real and environmental  
9     risks posed by toxic coal ash.

10           Both the EPA and the National Academy of  
11     Sciences have years of research showing that coal  
12     ash is becoming increasingly toxic. And it's  
13     clear that we also can't take the polluter's word  
14     that they will protect us and the environment from  
15     harm. Strong federal safeguards need to be issued  
16     quickly before more communities are exposed.  
17     Continuing to ignore scientific and safety  
18     concerns could come at a very high cost. And  
19     we've seen the high cost that's already being paid  
20     by people who live near coal ash. Effective coal  
21     ash regulations must require basic protections for  
22     communities such as composite liners, water runoff

1 controls, groundwater monitoring, and financial  
2 assurance that companies pay to clean up what they  
3 pollute.

4 Improved testing methods reveal that  
5 coal ash is significantly more toxic than  
6 originally thought, and has an increased risk of  
7 leaking into waterways. The levels of pollution  
8 like arsenic seeping from coal ash were found to  
9 be significantly higher than what is considered  
10 safe for drinking water. Concentration of metals  
11 and chemicals in coal ash have been found at  
12 levels many times higher than what is considered  
13 hazardous -- currently considered hazardous waste.

14 Living near a coal ash site is  
15 significantly more dangerous than smoking a pack  
16 of cigarettes a day, according to risk assessment  
17 done by EPA. People living near unlined coal ash  
18 ponds have an extremely high 1 in 50 risk of  
19 cancer. That's more than 22,000 times higher than  
20 what EPA considers acceptable. And the toxins  
21 found in coal ash have been linked to organ  
22 disease, cancer, respiratory illnesses,

1       neurological damage and developmental problems.  
2       Children are more susceptible to the health impact  
3       of coal ash, a disturbing fact since the EPA has  
4       found that millions of children live near coal  
5       sites.

6                   And we're -- we're -- we are definitely  
7       not in favor of the weak status quo option, which  
8       is Subtitle D. Thank you. And I will be  
9       submitting further comments.

10                  MR. DELLINGER: Thank you. Number 25.

11                  SPEAKER: Hi, my name is Lloyd French.  
12       I'm with Waukesha Pearce Industries, and we are a  
13       construction mining equipment provider. Waukesha  
14       Pearce Industries is very concerned about a  
15       potential environmental protection agency ruling  
16       pertaining to the regulation of fly ash, a coal  
17       combustion product, as a hazardous waste product.

18                  Our company has been providing heavy  
19       construction, mining equipment, and services to  
20       this industry for over 26 years. We are concerned  
21       about the labeling of coal ash and its byproducts  
22       as hazardous material in any form. Our current



1       MSDS sheets and environmental evaluation of coal  
2       ash handled by our equipment indicate no levels of  
3       toxicity above the regulations required for the  
4       public health and safety.

5               Our company believes that attaching any  
6       hazardous label to coal ash byproducts will  
7       drastically reduce the ability of our industry to  
8       continue perhaps the best, safest, and most  
9       responsible reuse of coal ash currently known. If  
10      the EPA attaches a hazardous label to coal ash  
11      byproducts, the industries that we supply  
12      equipment to will be forced out of business and  
13      greatly reduce our ability to remain competitive,  
14      along with countless jobs being lost. We feel  
15      very strong about the positive economic benefit  
16      this product has for our infrastructure. This  
17      decision, in our minds, will have a very negative  
18      impact on the economy as a whole, especially  
19      during these tough times. We strongly encourage  
20      your department to please review and reconsider  
21      the consequences of this ruling. Thank you.

22              MR. DELLINGER: Thank you. Number 26.

1                   SPEAKER: Good morning. My name is  
2 Chris Lechner. I'm executive director of the  
3 Precast Concrete Manufacturers Association of  
4 Texas. I represent twelve Texas manufacturers of  
5 prestressed, precast concrete products. Those  
6 products are used in most of Texas bridges and  
7 buildings, as well.

8                   There are three reasons for my  
9 opposition. Number one is concern regarding the  
10 future availability of fly ash, a useful  
11 ingredient in precast and prestressed concrete.  
12 Number two is simply to question why are we  
13 considering a move that adds to the waste stream  
14 when we have a viable proven method of recycling  
15 this resource. And three, cost is an underlying  
16 implication of my comments.

17                  The precast, prestressed concrete  
18 industry relies on high early strength concrete.  
19 Fly ash actually slows our turnaround time. But  
20 it's added benefits currently outweigh the time  
21 factor; important benefits such as reduced water  
22 usage, improved concrete resistance to chemical

1       attack, improved concrete strength and durability.  
2       Fly ash works well with Texas aggregates, rock,  
3       stone, and sand, and increases the use of locally  
4       available materials. The Texas Department of  
5       Transportation mandates its use in precast and  
6       prestressed concrete products, as well as other  
7       concrete applications because of its contribution  
8       to durability.

9               Currently, there is no word if they plan  
10       to change their specification to exclude fly ash  
11       if the classification changes. Either way, that  
12       decision could leave precast manufacturers in a  
13       precarious position if it is relabeled.  
14       Relabeling disposal is really an all-or-nothing  
15       proposal. The burden of a hazardous label by  
16       association penalizes sound reuse practices and  
17       puts up roadblocks to future innovation.

18              In managing the resource, we have to  
19       continue to take advantage of all available  
20       options for responsible disposal and use.  
21       Engineers and architects rule my world. From  
22       concept through construction, they are part of

1 everything we make. Just the fact that this is  
2 being discussed has raised -- raised concerns of  
3 availability, liability, and cost. All of a  
4 sudden, an accepted and proven ingredient is  
5 simply relabeled.

6 A hazardous label will twist supply and  
7 demand. The label will compel producers to  
8 reconsider their sales of ash products, and costs  
9 will go up, supplies will dry up. Engineers and  
10 manufacturers will lose its benefits and be made  
11 to switch to more expensive chemical additives.

12 Maybe more oversight is warranted, but a  
13 hazard tag is not a solution. It is an  
14 impediment. This is a product that is needed and  
15 has a manageable life cycle. Disposal issues can  
16 be dealt with in a responsible manner that relies  
17 on science and not fear. Thank you.

18 MR. DELLINGER: Thank you. Number 202.

19 SPEAKER: My name is David Orr. I'm the  
20 chair of the Ozark Headwaters Group of Sierra Club  
21 in Arkansas. And I am also founder of Arkansans  
22 Against Ash Dumping. We appreciate the

1        opportunity today to support the proposed Subtitle  
2        C rule that would regulate coal fly ash as a  
3        hazardous waste material. In our state, the --  
4        the regulatory framework is considered by many to  
5        be one of the weakest in the United States. Our  
6        Department of Environmental Quality has little  
7        authority to take enforcement actions of any  
8        significance under the Clean Water Act and other  
9        -- and other environmental laws. We need help  
10       from EPA and from the federal government generally  
11       to put additional pressure on our state and on the  
12       Arkansas Department of Environmental Quality to  
13       take its responsibilities under federal  
14       environmental law more seriously or else take  
15       enforcement over from ADEQ and the other agencies  
16       that are failing in their responsibilities.

17                    And while we have concerns with failure  
18       to enforce existing laws, we are here today to  
19       bring to your attention a growing threat to  
20       groundwater and aquifers in our state, and to our  
21       streams and soils, as well. The unregulated  
22       dumping of coal ash is polluting our state,

1       especially now in areas where drilling for natural  
2       gas is occurring. We have the Fayetteville shale  
3       formation where hydraulic fracking techniques are  
4       used that cause extensive damage to aquifers,  
5       streams, and soils.

6               This fracking technology uses massive  
7       amounts of clean water from groundwater supplies  
8       and surface water supplies in fracturing  
9       underground gas-bearing rock. Water is mixed with  
10      toxic drill muds, organic chemicals including  
11      benzene and toluene and other heavy metals. These  
12      pollutants are either left in place or pumped out  
13      of the drill holes and dumped in open pits or  
14      pumped down other holes and ponds, such as is done  
15      in Bokoshe, Oklahoma, just across our western  
16      border near Fort Smith.

17             We are now informed that fly ash is  
18      being pumped into abandoned drill holes where it  
19      may be leaching into adjacent groundwater  
20      supplies. Because there is no regulation of ash  
21      today, we have no idea how much ash is being  
22      dumped into wells, nor do we know how much

1       leachate has migrated or will migrate into  
2       aquifers. We have learned that Oklahoma ash is  
3       being hauled into Arkansas for dumping and vice  
4       versa. Clearly, there is now an interstate  
5       commerce in fly ash. We must have federal  
6       intervention and regulation to control the  
7       proliferation of these shipments.

8               And I will have additional comments to  
9       submit in written form. Thank you very much for  
10      your time.

11             MR. DELLINGER: Thank you. Number 27.

12             SPEAKER: My name is Ben Franklin. I'm  
13      here representing Headwaters Resources, of which  
14      I'm director of technical services. Headwaters  
15      Resources markets CC products for over 100 plants  
16      in the U.S., marketing the materials, the ready  
17      mixed cement wallboard, roofing shingles,  
18      manufacturers, et cetera.

19             The use of fly ash is prevalent in most  
20      all state and federal infrastructure projects.  
21      It's used because it enhances the durability and  
22      lowers the initial cost of the highway paving,

1 bridge decks, and all other concrete structures.  
2 The use of fly ash significantly impacts the life  
3 cycle cost of the infrastructure in the U.S.

4 TxDOT has a significant problem with  
5 making concrete that will last, due to the poor  
6 stone and sands available. These aggregates may  
7 be expansive when exposed to highly alkaline  
8 cements and sulfated soils or groundwater. The  
9 best way to mitigate this issue at the lowest cost  
10 is by using fly ash. Without the fly ash in the  
11 state concrete mixes, the cost to the state  
12 taxpayer to pave a mile of roadway or build any  
13 concrete structure will likely double or triple.

14 In 2008, almost 12 million tons of ash  
15 was recycled and used for beneficial use  
  
16 applications. Because of the use of ash, the  
17 following was saved or reduced: 15 million tons  
18 of CO2 reduced from our atmosphere, 32 billion  
19 gallons of water was saved, 159 trillion BTU's of  
20 energy, and approximately \$5 to \$7 billion. You  
21 must keep in mind before ruling that you can only  
22 impose regulation of the sale of the CCPs. You



1 cannot, however, force the companies to sell CCPs.  
2 I understand there are some people in the room  
3 that would like that avenue.

4 But keep this in mind, due to perceived  
5 liability, many of the nation's power plants are  
6 considering not selling CCPs at all, which is  
7 counterintuitive to what we're trying to  
8 accomplish here. You must consider that if the  
9 utilities choose not to sell CCPs, anyone that  
10 uses concrete will then be using significantly  
11 more portland cement. And of course, that will  
12 mean more O2 produce -- CO2 produced and polluted  
13 into the atmosphere.

14 There are other substitutes for fly ash,  
15 but they're small in quantity and all of them are  
16 double or triple in price. Coal ash and other  
17 CCPs are recognized as a beneficial and  
18 environmentally sound material by organizations  
19 such as U.S. Green Building Council, ACI, and AS  
20 -- ASTM.

21 If the EPA promulgates CCPs under  
22 Subtitle C, it opens to the door to liability and

1 stigma, some of which is already occurring. The  
2 EPA's unwillingness to come out to -- in all media  
3 forms and state that CCPs are not toxic nor  
4 hazardous when beneficially used is already  
5 crippling the beneficial use of these materials.  
6 The EPA has promoted the use of CCPs through the  
7 C2P2 partnership, and has extensively studied C2  
8 -- CCPs, reporting that they are not hazardous nor  
9 toxic.

10 We encourage the EPA to reinstate the  
11 C2P2 program fully and to make a public statement  
12 stating that CCPs are not toxic nor hazardous when  
13 beneficially used -- when utilized. Lastly, we  
14 implore the EPA to make the correct and sensible  
15 ruling, that of the Subtitle D option. Thank you.

16 MR. DELLINGER: Thank you. Can Numbers  
17 28, 29, 30, 31, and 203 move forward? Number 28.

18 SPEAKER: Hello, I'm Dr. Karen Lewis.  
19 I'm a Dallas area pediatrician and a member of  
20 Physicians For Social Responsibility. As a  
21 physician, I'm here today to strongly encourage  
22 the EPA to assume regulation of coal ash disposal

1       under Subtitle C of the Resource Conservation and  
2       Recovery Act. Coal ash, the residue left over  
3       after coal is burned, contains some of the world's  
4       deadliest toxins, arsenic, lead, mercury, cadmium,  
5       selenium, and many others. This ash is disposed  
6       at nearly a thousand sites across the nation.

7               Currently, toxic elements escape from  
8       many of those sites, contaminating the  
9       environment, killing fish, entering underground  
10      aquifers, and poisoning drinking water wells.  
11      This ash is a major threat to the health of Texas  
12      residents. If eaten, drunk, or inhaled, these  
13      toxins can cause significant health problems,  
14      especially cancer, heart and lung damage, kidney  
15      damage, cognitive deficits, developmental delays,  
16      and behavioral problems.

17             These aren't little known toxins.  
18      Arsenic is a deadly poison historically used for  
19      murder. The EPA has found that if you live near  
20      an unlined wet ash pond and you get drinking water  
21      from a well near there, you may have as much as a  
22      one in fifty chance of getting cancer from

1       drinking that water.

2               Lead is a heavy metal so toxic that we  
3       doctors routinely screen young children as they  
4       may have eaten lead-based paint chips. If  
5       poisoned, they need immediate treatment to attempt  
6       to prevent permanent learning and behavioral  
7       disorders. No safe threshold for lead has been  
8       discovered.

9               Mercury is another heavy metal well  
10      known for its brain damaging effects, especially  
11      on fetuses and young children. Doctors recommend  
12      that pregnant women not eat large fish and limit  
13      their intake of small fish to no more than twice a  
14      week. But why is there mercury in the water in  
15      the first place? According to the EPA's toxic  
16      release inventory, over 75 percent of the mercury  
17      pollution in Texas comes from coal plants. This  
18      is a big problem.

19              The EPA estimated that 140 million tons  
20      of coal ash are generated annually, making it the  
21      second largest industrial waste stream in the  
22      United States. The current coal ash disposal

1 sites are inadequate, especially with wet surface  
2 impoundments accounting for about a fifth of them.  
3 Federal regulation is essential to ensure that  
4 coal ash disposal sites adequately protect human  
5 health.

6           These efforts may be difficult for  
7 businesses in the current economy, but cancer,  
8 brain damage, and death are difficult, too.  
9 Shouldn't human health come first? As fellow PSR  
10 member Barb Gottlieb said, if coal ash is going to  
11 bear a stigma, let it be the stigma of lives that  
12 are lost, not jobs.

13           Along with many other doctors from  
14 Physicians for Social Responsibility, I strongly  
15 urge the EPA to assume regulation of coal ash  
16 disposal.

17           MR. DELLINGER: Thank you. Number 29.

18           SPEAKER: My name is Bob Sparacino. I'm  
19 a father and a concerned citizen that has been in  
20 the -- in the coal combustion products industry  
21 for 25 years and supports a family of -- of three  
22 through my coal combustion products marketing

1       efforts.

2               I worry that this reclassification will  
3       have a devastating effect on my ability to support  
4       my family. I do support regulations for coal ash  
5       disposal that protects health of humans and the  
6       environment while encouraging additional recycling  
7       of the materials. This cannot happen if the EPA  
8       designates coal ash as a hazardous special waste  
9       under Subtitle C.

10              In my line of work, I deal with many  
11       engineers that have express -- that have expressed  
12       concerns over the risks associated with specifying  
13       materials into the projects they design that are  
14       considered hazardous when in a landfill, nor will  
15       the public want these materials in their homes and  
16       schools. I also work with a tremendous number of  
17       end users that are in the process of exploring  
18       other expensive options when this re --  
19       reclassification is made, to avoid any risk of  
20       liability by using coal combustion products.

21              When the beneficial uses are lost under  
22       this reclassification, we will also lose the

1 environmental benefits associated with recycling  
2 coal combustion products, including landfill space  
3 and natural resources, as well as avoiding  
4 millions of tons of greenhouse gases by avoiding  
5 the manufacturing of materials that coal ash  
6 replaces.

7 The EPA can and should enact new  
8 regulations while encouraging additional safe --  
9 additional and safe recycling of coal combustion  
10 products as a more desirable alternative. The EPA  
11 must not designate coal ash as a hazardous special  
12 waste. Thank you.

13 MR. DELLINGER: Thank you. Number 30.

14 SPEAKER: I would like to thank the EPA  
15 for the opportunity to speak today. My name is  
16 Bill Gehrman. I'm the president of Headwaters  
17 Resources, the largest marketer of coal combustion  
18 products in the United States.

19 The EPA and speakers at the Arlington  
20 and Denver hearings have stated that they feel a  
21 Subtitle C hazardous waste designation would  
22 incentivize the industry particularly utilities to

1       increase recycling. Waste oil and electric arc  
2       furnace dust have been used as examples where  
3       Subtitle C designation has lead to increases in  
4       recycling.

5               However, there are substantial  
6       differences when you compare these examples to  
7       coal ash. Disposal cost including treatment for  
8       these two wastes are much higher than those for  
9       coal ash. Under the proposed regulations for  
10      Subtitles C and D, coal ash does not require any  
11      treatment prior to being land-filled. When truly  
12      recycled, oil is typically sold at prices similar  
13      to those of new oil, the product it competes with.  
14      In fact, most recycled waste oil is actually  
15      burned or incinerated as fuel. Electric arc  
16      furnace dust recycling typically results in the  
17      sales of extracted metals, bringing the same  
18      values as virgin metals. These values coupled  
19      with much higher disposal costs incentivize the  
20      recycling.

21              Fly ash, on the other hand, the coal ash  
22      with the highest beneficial use value typically



1        sells for 30 to 50 percent of the price of  
2        portland cement. The substantial pricing  
3        incentive is already there. Approximately 44  
4        percent of coal ash is currently recycled. The  
5        theory that the additional pricing incentives will  
6        lead to more beneficial use in an already mature  
7        recycling market does not make sense. No one  
8        disagrees with the fact that under either  
9        proposal, disposal costs will go up.

10                The utility industry has the ability to  
11        pass these increased costs through to us, the rate  
12        payers. When a utility weighs a potential  
13        liability to beneficial use under Subtitle C  
14        designation, many will minimize risk by sending  
15        all of their coal ash to the landfill. It is a  
16        logical decision when they can minimize their risk  
17        and have increased -- increased cost of disposal  
18        covered by the rate payer.

19                This is not the case for companies  
20        dealing with waste oil and electric arc furnace  
21        dust. You've already heard that the stigma of the  
22        Subtitle C hazardous waste designation isn't

1 negatively impacting beneficial use. There should  
2 be no doubt in anyone's mind that the risk  
3 assessment decisions made by utilities specifiers  
4 and beneficial users under Subtitle C will result  
5 in more coal ash going into landfills.

6 As the administrator has said, it is  
7 time for a commonsense approach. The proposed  
8 engineering standards are essentially the same  
9 under both the proposed regulations for Subtitles  
10 C and D. Enactment will happen faster under  
11 Subtitle D. Don't do it under Subtitle C. Don't  
12 send more coal ash to the landfill. Thank you.

13 MR. DELLINGER: Number 31.

14 SPEAKER: Good morning. Thank you for  
15 the opportunity to voice my position on this  
16 important issue. My name is Gary Shelton, and I  
17 am with Boral Material Technologies. Our  
18 company's principle business is coal combustion  
19 products marketing and management. We have been  
20 involved with these activities for over 50 years.  
21 And certainly, we are supportive of the effort to  
22 protect the environment and human health. There's

1       no doubt about that. We believe that this goal  
2       can be accomplished by regulating coal combustion  
3       products under a Subtitle D classification and  
4       that a Subtitle C classification will be harmful  
5       to the continued and ongoing use of these  
6       products.

7               The event at Kingston and any other  
8       events are disposal and material management  
9       issues. They were not caused by the material  
10      itself and certainly not a hazardous material  
11      problem.

12             Currently, one of the largest and most  
13      successful uses of coal combustion products is the  
14      use of fly ash in the production of concrete,  
15      which you've heard here today. This type of use  
16      has a proven 50-year record of successful use that  
17      is safe and productive. Increased use of all of  
18      these types of recovered resources in safe and  
19      appropriate markets is also occurring in other  
20      segments such as the uses as a mineral filler.

21             These developments are accomplished in a  
22      judicious manner after extensive evaluations of

1 material performance, safety and environmental  
2 impacts, and the economics of the intended use.  
3 Any type of hazardous classification will  
4 negatively impact usage.

5           The -- the reality is the stigma issue  
6 is real. I have firsthand experience with  
7 concrete producers, the engineering community, and  
8 various agencies who report that a hazardous  
9 classification will at a very minimum cause these  
10 users -- these CCP users to reevaluate their  
11 practices. A Subtitle C regulation will only harm  
12 the beneficial use of CCPs. The overall effect  
13 will be -- will result in increase of virgin mine  
14 raw materials. CCPs have a proven -- have proven  
15 to be a valuable recovered resource that has been  
16 long recognized by the EPA for its benefits to the  
17 environment and society for many years.

18           Coal combustion products should be  
19 handled, managed, and stored according to sound  
20 engineering procedures. This should be  
21 accomplished at the plant sites where these  
22 materials are produced in the correct manner.

1       This goal can be -- can be accomplished without  
2       the risk of decreasing the ongoing and growing  
3       application of these products in a constructive  
4       method.

5               I encourage the people -- the EPA to use  
6       sound scientific evidence as it makes the final  
7       determination on classification. Such evidence  
8       does strongly suggest that the correct material  
9       classification is Subtitle D. We oppose the  
10      regulation of CCPs as a Subtitle -- Subtitle C or  
11      any hybrid classification. Thank you for your  
12      opportunity.

13             MR. DELLINGER: Thank you. Number 203.  
14      Is Number 203 here? 204? 205?

15             SPEAKER: My name is Robert Walker. I'm  
16      from Arkansas. Thank you for the opportunity to  
17      speak. I am -- I believe that these warnings from  
18      the concrete producers is a red herring. My  
19      example is lead paint. The lead in household  
20      paints was banned in 1978. You couldn't buy it  
21      anymore to be used in houses. However, paint is  
22      -- lead is still used in the paint for highways

1       and bridges because it is not so much a danger  
2       there, and it is -- it has good qualities. I  
3       believe that the regulations will allow the use --  
4       the concrete products the use of fly ash. In  
5       Arkansas, the fly ash is being dumped, it's  
6       getting into the water, it's ruining water wells.  
7       I think it's open and shut that it should be  
8       regulated. And I recommend you use the C  
9       approach, the Charlie. Thank you.

10               MR. DELLINGER: Thank you. Can we have  
11       Numbers 32, 33, 35, 36, and 206 move forward.  
12       Number 32. Is Number 32 in the room? Number 33?  
13       Number 35?

14               SPEAKER: Good morning. I'm David  
15       Ditta. And I work for Boral Material  
16       Technologies. Boral's primary business is in coal  
17       combustion byproduct management and recycling. We  
18       specialize in marketing coal fly ash to the ready  
19       mixed concrete and concrete product industries.  
20       Our organization has been marketing coal  
21       combustion byproducts for over five decades.

22               We support the EPA's efforts to protect

1       the welfare of citizens and of our environment.  
2       However, we recommend a sensible approach when it  
3       comes to the regulation of coal combustion  
4       byproducts. We feel that a Subtitle C hazardous  
5       regulation will negatively impact the future  
6       success of fly ash in the construction industry.  
7       The harshly label of material that has been used  
8       for decades in concrete is supplementary  
9       cementitious material will undoubtedly have  
10      equally harsh consequences on our nation's  
11      infrastructure, concrete durability, electricity  
12      consumers, and finally the U.S. economy.

13               The stigma attached with a Subtitle C  
14      designation will grow exponentially. Project  
15      owners, specifiers, architects, engineers,  
16      municipalities, and state department of  
17      transportations will refuse to allow fly ash in  
18      their projects for fear of exposure to future  
19      legal liabilities. The EPA should recognize the  
20      successful utilization of coal ash in the United  
21      States and avoid a path that would negatively  
22      effect the future success of this material.

1                   Accordingly -- according to EPA, when  
2     fly ash is used in concrete, it significantly  
3     reduces the amount of greenhouse gases produced.  
4     The Electric Power Research Institute estimates  
5     that through beneficial uses coal combustion  
6     byproducts reduce CO2 production by 11 million  
7     tons annually. They also estimate that by using  
8     these products, we save over 51 million cubic  
9     yards of landfill space in the U.S. The U.S.  
10    Green Building Council recognizes that fly ash in  
11    concrete contributes to the recycled materials  
12    content in the lead rating system at the same time  
13    as being kept from disposal and landfills.

14                  Finally, we support recycling coal ash  
15    as a safe, environmentally preferable alternative  
16    to disposal. Therefore, we recommend the EPA  
17    regulate coal combustion byproducts under the  
18    Resource Conservation and Recovery Act Subtitle D and  
19    avoid any reference to these byproducts as a  
20    hazardous waste. Thank you.

21                  MR. DELLINGER: Number 33.

22                  SPEAKER: I'm Rel Corbin from Little



1     Rock, Arkansas. Substituting fly ash for portland  
2     cement creates concrete that is -- has pretty good  
3     compressive strength, but it does not have good  
4     tensile strength to support a load like over a  
5     span. So our highways start crumbling within 15  
6     or 20 years, and that's releasing the dust right  
7     then.

8             Now, properly -- the properly built  
9     retaining walls may last a long time like beside  
10    the -- where the freeways going through town.  
11    Cinder blocks, you can use fly ash for cinders in  
12    -- in concrete blocks. And they're okay if  
13    they're -- if the design is right and properly  
14    reinforced. But the construction industry has  
15    been using fly ash in cinders all along, decades  
16    -- at least decades. And I don't think they need  
17    that much more. So we're back to storing fly ash  
18    and cinders in heaps or in -- I guess it's sludge  
19    in ponds. Now, if you don't keep those heaps  
20    moistened, dust is going to blow off. That -- all  
21    the toxins from coal dust are going to blow out.  
22    If you moisten it, you're creating a leachate that

1 is going to leak -- leak and get into water and --  
2 and ground. If you store it as sludge, wet -- and  
3 even if you've got a liner under these ash heaps  
4 or under the ponds, those liners aren't going to  
5 last forever. They're going to disintegrate. And  
6 that poison is going to go into the groundwater or  
7 out under the surface water. So I don't see a  
8 practical way to deal with coal -- byproducts that  
9 coal can -- con -- coal residuals. So I think we  
10 need to really be pushing for other sources of  
11 energy, passive types -- because we have to get  
12 away from coal. There's no solution to dealing  
13 with the coal residuals. Thank you very much.

14 MR. DELLINGER: I'm sorry. I may have  
15 lost count. Are you Number 36?

16 SPEAKER: I'm 36.

17 MR. DELLINGER: Okay. Then I didn't  
18 lose count.

19 SPEAKER: No, you didn't. My name is  
20 Terry Henrickson. And I am a citizen, and I  
21 oppose Subtitle C. I've been in the concrete and  
22 related business now for some 30 years. I believe

1       this scare turning fly ash into a hazardous  
2       material has already stopped requests for the  
3       seminars that I've been giving for the last few  
4       years on the use of fly ash in concrete. These  
5       seminars were numerous up to the last six, eight  
6       months, when these hearings started. They have  
7       since stopped. I think there's a scare out there  
8       that they're worried about designing concrete or  
9       buildings with fly ash in them.

10               I've also been informed by most, if not  
11       all, of the ready mixed concrete producers in  
12       North Texas and Oklahoma that if the stigma comes  
13       in of fly ash, they will be forced to take it out  
14       of their concrete. They're afraid of it. This  
15       scare is real to them. It would be easier to take  
16       it out of their concrete than to fight the stigma  
17       that -- that will arise from it.

18               There is no doubt in my mind that they  
19       will stop using ash if Subtitle C is put into  
20       place. Like utilities that -- will be forced to  
21       raise our electrical cost to dispose of this ash,  
22       concrete companies will have to charge more for a

1       less quality product without fly ash. This will  
2       affect all of us.

3               The Corps of Engineers across this  
4       region are working on air force bases such as  
5       Tinker, Altus, Sheppard Air Force bases. Their  
6       concrete problems they've seen have stemmed from a  
7       lack of a design concrete that they think can be  
8       fixed by the use of fly ash. This is either a  
9       spalling issue, an ASR issue. They will be using  
10      a lot of fly ash, but those general contractors  
11      doing these jobs are going to be asking the same  
12      question our local producers are going to be  
13      asked, and that is the stigma and are they going  
14      to be wanting to do it. Is the EPA or the federal  
15      government ready to handle these questions from  
16      these general contractors doing jobs on these  
17      federal properties.

18             These are but a few of the examples that  
19      I bring to you today. And I ask you to remember  
20      that there is a lot of reasons why we use it. We  
21      understand what are -- the other concerns are.  
22      But Subtitle D is still the way we need to go with

1       this. Again, I thank you. Have a good day.

2               MR. DELLINGER: Is Number 206 here?

3               SPEAKER: Hi. My name is John Ridell.

4       I'm a local resident here. I had no idea that I  
5       was going to be speaking today or anything like  
6       that. I came here for an extra-credit opportunity  
7       from my instructor and my teacher at the college.  
8       He told me that I should come up here and talk  
9       about this, and I figured why not.

10              Really, I've heard a lot of good  
11      arguments on both sides. I personally think that  
12      Subtitle C would be the best way to go because  
13      although, you know, there have been new proposals  
14      about making concrete so that it'll work better  
15      with the coal ash and stuff like that, if you do  
16      not put any regulations on this problem, then it  
17      will continue to be a problem.

18              Yes, companies can say they try to do  
19      stuff, but there are many who -- many times we  
20      have seen problems with this. You know, I mean,  
21      you'll see trucks driving with it, you'll see the  
22      coal ash flying right out because they don't have

1       their trucks covered or anything like that.

2               It's a main problem that a lot of people  
3       have suffered from. There have been cases in  
4       Tennessee and many other places where people and  
5       children have been injured. Imagine your children  
6       growing up with this problem, with piles of coal  
7       ash building up everywhere, contaminating water,  
8       contaminating everything.

9               There is a main problem. It is a  
10       really, really big problem, and a lot of people  
11       just overlook it and think it's not a big deal.  
12       Coal ash is a problem. It should be dealt with.  
13       I don't want to grow up, I don't want my children  
14       to grow up, with this problem, with contamination.

15              Arsenic is a very, very dangerous  
16       substance, as well as mercury and the other  
17       contaminants that are in coal ash. And, you know,  
18       one of my projects a while ago was a really  
19       detailed study with arsenic. And I'll tell you  
20       what, it's something you do not want to mess with.

21              It is in coal ash, and it's been  
22       contaminating our water supplies. It is being put

1       into big lakes of water. When the lake waters dry  
2       up, it goes up into the air. Being airborne is a  
3       big problem. People have become sick from it, and  
4       they will, if you do not take care of this. Thank  
5       you.

6               MR. DELLINGER: Is there anyone in the  
7       room with a number lower than 36 that has not  
8       spoken? Okay. We'll move on to Numbers 37, 38,  
9       39, and 40. Number 37. Number 38.

10              SPEAKER: Good afternoon. My name is  
11       Becky Williams, and I'm here from Little Rock,  
12       Arkansas. There's a bunch of us here from  
13       Arkansas.

14              I speak from several perspectives. One  
15       is I'm a small business owner, and I've had a  
16       small business for about 15 years. Before that, I  
17       worked in public health for 17 years. I'm also a  
18       mother who has a 25-year-old daughter who is  
19       married, and my son-in-law just got back from 15  
20       months in Iraq. I feel very blessed that he came  
21       back alive, and I guess part of what I feel your  
22       responsibility is is to make sure that he and his

1       wife have clean water to drink so they don't -- he  
2       doesn't now die back here in the United States  
3       from contaminated water.

4               I feel like -- you know, I worked in  
5       public health for a long time, and I've seen what  
6       can happen with prevention and how we save money,  
7       much, much more money with prevention than we do  
8       after the fact. My first job was in the intensive  
9       care nursery at University Medical Center. That  
10      was very much after the fact. I saw babies die  
11      because the moms didn't get prenatal care.

12             And I guess that's what we're talking  
13      about here is prevention. We're talking about  
14      what is a way to make sure that our water is clean  
15      to drink and that we can help prevent on down the  
16      line those deadly, seriously, terrifically  
17      expensive diseases that we can be exposed to.

18             The last person that I speak for is  
19      myself as an individual. I just love our earth,  
20      and I see -- we are the people that are here to  
21      take care of it. You know, I'm politically  
22      active. I voted for this administration, hoping



1       that the EPA would be here to protect us.

2               And I just -- I thank you for these  
3       hearings. I thank you for the opportunity to have  
4       an alternative where you will be here to protect  
5       us. Thank you.

6               MR. DELLINGER: Thank you. Number 39.

7               SPEAKER: My name is Gary Harron. I'm  
8       representing Tarrant Concrete in Fort Worth.

9               Rather than echo most of the speakers  
10      here, I'll start by saying I don't think there is  
11      anybody in this room that doesn't believe and  
12      agree that there needs to be some type of a trump.  
13      I've been in this business well over three decades  
14      now. I was one of the handful that realized the  
15      benefits that coal ash had in our industry from an  
16      early start.

17              It's been a long road. We -- we have  
18      years of credible -- and I emphasize the word  
19      "credible" -- research and development relative to  
20      the benefits of coal ash in our concrete in terms  
21      of durability, increased durability, control,  
22      strength gains, and service life.

1           I heard a gentleman a while ago talking  
2       about roads crumbling and all of that. We are  
3       designing concrete now, performance concrete, with  
4       a service life of 100 years, and that's in part  
5       due to the performance-based specifications, coal  
6       ash being a big part of that.

7           What I wanted to focus on is maybe the  
8       impact of labeling this as a hazardous material.  
9       I've heard -- all things mention, you know, the  
10      negative impact it would have with the engineers,  
11      the associations, all involved with the concrete  
12      industry, but what I haven't heard that anybody  
13      has considered is what about the structures that  
14      we have that are in place. What's to stop the  
15      humongous litigation that we're hooking ourselves  
16      up to for existing structures if this product is  
17      labeled as a hazardous material? Thank you for  
18      listening.

19           MR. DELLINGER: Number 40.

20           SPEAKER: Hi. My name is Walt Baum, and  
21       I am testifying today on behalf of the Association  
22       of Electric Companies of Texas, or AECT. We are

1 an industry trade association representing the  
2 different electric companies in the state. Our  
3 AECT members have a general interest in EPA's coal  
4 combustion residuals proposed rule as our members  
5 own and operate electric-generating plants that  
6 are impacted by this rule. I'm here today  
7 representing our members that own coal plants in  
8 Texas.

9 Texas contains the largest electric  
10 market in the country. We generate 80 percent  
11 more electricity here than in any other state, and  
12 we're different from other states because about 80  
13 percent of our electric load is contained within  
14 ERCOT, our own intrastate electric grid, and we  
15 have very limited connection with the Eastern and  
16 the Western interconnects.

17 We truly are an island, and we're  
18 responsible for generating the electricity that  
19 our growing population needs, and we aim to  
20 maintain a very diverse fuel mix, using coal,  
21 natural gas, nuclear and wind, where we lead the  
22 country in renewables, to allow the state to hedge

1 the benefits and challenges inherent in each of  
2 these fuel sources.

3 Baseload coal generation accounts for  
4 about 38 percent of the electricity generated in  
5 Texas. According to studies done by the noted  
6 economist, Ray Perryman, coal production and use  
7 in Texas creates over 33,000 jobs and contributes  
8 over \$10.5 billion to the Texas economy.

9 Regulation of CCRs as a hazardous  
10 material potentially would threaten electric  
11 liability and it would increase electricity prices  
12 for consumers and businesses due to the  
13 significant compliance costs on generators.

14 In some cases, these costs would be  
15 sufficiently high to render certain fuels, such as  
16 Texas lignite, uneconomic, and result in power  
17 plant and/or mine closures that would cost Texas  
18 jobs and tax revenue at a time when both are in  
19 short supply and at a time when Texas, unlike many  
20 regions of the country, is experiencing record  
21 electricity demand and sustained growth.

22 Across the industry, the proposal for

1 regulation of CCRs as a hazardous material under  
2 Subtitle C would strip the states of the ability  
3 to cost-effectively regulate CCR disposal  
4 practices and would impede the beneficial reuse of  
5 CCRs. On four separate occasions, most recently  
6 in 2000, EPA made a regulatory determination that  
7 concluded that Subtitle C of RCRA is not the  
8 appropriate regulatory regime for regulating CCRs  
9 and that regulation as non-hazardous waste by the  
10 states is the appropriate option for ensuring the  
11 safe management of these materials while  
12 preserving recycling.

13 The Texas Commission on Environmental  
14 Quality oversees the design, construction,  
15 monitoring, reporting, and final closure of all  
16 CCR disposal facilities. TCEQ's robust state  
17 regulatory program ensures the disposal and reuse  
18 of CCRs are conducted in a manner that is  
19 protective of human health and the environment.

20 In summary, AECT strongly opposes the  
21 regulation of CCRs as a hazardous material and  
22 believes that Texas has a protective program that

1 does not need a new federal program. Thank you.

2 MR. DELLINGER: Numbers 42, 117, 44, 45,  
3 and 207. Number 42.

4 SPEAKER: My name is Bob Folser, and I'm  
5 here as chairman of the Texas Concrete Pipe  
6 Association, representing the precast concrete  
7 industries in Texas, 12 companies in 31 locations,  
8 with over 12,000 employees. I am here to express  
9 our concern about the potential EPA ruling  
10 pertaining to the regulation of fly ash, a coal  
11 combustion product, as a hazardous waste material.

12 The Texas DOT and many Texas  
13 municipalities encourage the use of fly ash for  
14 various reasons. Among the numerous benefits  
15 derived from using fly ash in concrete are  
16 improved longevity, increased strength and  
17 enhanced durability, all of which cannot be fully  
18 replaced by alternate means. Increasing the  
19 longevity of our infrastructure alone has huge  
20 positive implications for natural resource  
21 conservation and energy savings.

22 We believe that regulating fly ash as a

1 hazardous waste would have significant negative  
2 consequences that could potentially undo years of  
3 advancement in concrete durability. We believe  
4 that the fly ash market would virtually stop  
5 existing if the EPA designates fly ash as a  
6 hazardous waste, even if there is in place a  
7 beneficial reuse exemption.

8           Perceptions of fly ash will be  
9 negatively impacted. When material is deemed  
10 hazardous, there is no worse designation in the  
11 public's mind. Granting an exemption will not  
12 remove the emotional and mental stigma attached to  
13 the material.

14           We believe fly ash storage by concrete  
15 producers would be affected. We anticipate that  
16 concrete producers will be faced with issues such  
17 as added expenses to install special silos and  
18 handling practices to store and use fly ash in  
19 concrete.

20           The present or future use of fly ash, if  
21 classified as a hazardous waste, could expose  
22 federal, state and local agencies, as well as the

1 concrete industry, to significant legal  
2 liabilities if linked to safety exposures. In  
3 fact, because of the potential exposure and  
4 liability issues, fly ash generators may cease the  
5 beneficial reuse of fly ash and choose to landfill  
6 all that is generated.

7 For the reasons stated above, the Texas  
8 Concrete Pipe Association respectfully requests  
9 that the EPA considers these impacts to our  
10 operations and deems that CCRs be regulated under  
11 Subtitle D, non-hazardous material with beneficial  
12 reuse capabilities. Thank you.

13 MR. DELLINGER: Thank you. Number 43.  
14 Number 44.

15 SPEAKER: Good afternoon. My name is  
16 Bobby McNeeley. I am the chemical environmental  
17 supervisor at Luminant's Big Brown Power Plant in  
18 Freestone County. Thank you for the opportunity  
19 to provide a statement today.

20 As part of my responsibilities to Big  
21 Brown, I ensure that our power plant complies with  
22 Texas Commission on Environmental Quality's coal



1 combustion residuals handling and disposal  
2 regulations. These regulations are comprehensive  
3 and effective. As a whole, Luminant is in  
4 compliance with TCEQ's CCR regulations, and we  
5 have never experienced a failure at any of our  
6 facilities.

7 I take my work very seriously, as do my  
8 fellow co-workers. We live in the communities  
9 where CCRs are stored and disposed, so we owe it  
10 to our employees, our communities, and the  
11 environment to manage CCRs safely and responsibly.

12 And in my 30 years with the company,  
13 I've seen great benefits from the recycling and  
14 reuse of CCRs. By actively pursuing opportunities  
15 to recycle CCRs, Luminant has helped decrease  
16 energy costs, reduce emissions, save landfill  
17 space, and use less natural resources.

18 Since 1993, Luminant has sold nearly 40  
19 billion pounds of CCRs, including 2.2 billion  
20 pounds in the last year alone. These products  
21 have been used by the roofing and concrete  
22 industries, as you heard, as well as in oilfield

1 projects and for road paving.

2           There is a long list of projects across  
3 our state that have benefitted from the reuse of  
4 CCRs from Big Brown and other power plants --  
5 Luminant power plants. Here are just a few:  
6 Dallas's High Five Interchange, DFW Airport, State  
7 Highway 121, Radio Shack's corporate office in  
8 Downtown Fort Worth, City of Dallas Fire Station  
9 Number 40.

10           As you can see, not just industry  
11 benefits from the reuse of CCRs. Our communities  
12 and our neighbors do, when they commute to work,  
13 catch a flight, or depend on emergency services.

14           Designating CCRs as hazardous would have  
15 a devastating effect on the recycling of this  
16 by-product, leading to higher costs and job losses  
17 across many industries. A hazardous  
18 classification would destroy a viable and  
19 environmentally beneficial market. And it's  
20 important to note that on four separate occasions,  
21 most recently in 2000, EPA determined that the  
22 regulation of CCRs was not warranted.

1           As such, Luminant, in addition to over  
2   200 members of the U.S. Congress, 43 states, and  
3   numerous federal agencies, strongly opposes the  
4   regulation of CCRs as a hazardous material under  
5   the RCRA Subtitle C hazardous waste program and  
6   recommends that EPA continue to allow states to  
7   run their own programs. Thank you.

8           MR. DELLINGER: Thank you. Number 45.

9           SPEAKER: Hi. My name is Allison Sliva.  
10   I'm from Bay City, Texas, and I run a county on  
11   the Texas Gulf Coast. I'm not a paid spokesman.  
12   I'm here on my own time. I represent a group in  
13   our county called No Coal Coalition, and we are  
14   fighting a plant that wants to come into our  
15   county called White Stallion Energy Center, and  
16   I'm proud to say we're now 800 members strong.

17           We definitely support regulating coal  
18   ash as a special waste and treating it as a  
19   hazardous substance, and this under the Resource  
20   Conservation and Recovery Act of Subtitle C.

21           We all know coal ash contains lead,  
22   mercury, arsenic, selenium, cadmium, boron,

1 sulfate, and a whole bunch of other things I can't  
2 even pronounce. This stuff is poison. There are  
3 no acceptable levels of exposure to mercury and  
4 lead. The toxicity of these is measured in  
5 micrograms. I find it a little bit unnerving that  
6 we're talking about concrete and I'm talking about  
7 people.

8           These toxins, these poisons, are  
9 leaching into our water. I come from a rural  
10 county. No one really pays attention to us. We  
11 have no independent monitoring of our air or  
12 water. In fact, you can put our county three  
13 times into Texas Memorial Stadium in Austin.  
14 We're a small county. No one's paying attention  
15 to us.

16           But we have farmers. We have ranchers.  
17 We're an ag community. We have fishing. We have  
18 shrimping. What the heck is this going to do to  
19 our water? This coal pit that wants to move into  
20 our county, its ash site, its disposal site, is on  
21 the Colorado River.

22           We evacuated for Ike. We evacuated for

1 Rita. You notice we're having a little weather  
2 event right now. What's going to happen when all  
3 that water hits this ash and it leaches into our  
4 river? We're just upriver from Matagorda Bay and  
5 the Gulf of Mexico.

6 I have no faith in the Texas Commission  
7 on Environmental Quality. If you look at the  
8 recently posted proposed air quality standards for  
9 the state of Texas, it shows 75 percent of Texans  
10 will be breathing, are breathing, dirty air. If  
11 TCEQ were doing its job, 75 percent of Texans  
12 should be breathing clean air.

13 I'm tired of us talking about wealth  
14 over health, and I beg the EPA to step in and  
15 protect our communities and our families. I voted  
16 for this administration for just -- one of the  
17 very reasons I voted for you guys and this  
18 administration, and I hope you will regulate toxic  
19 coal ash. Thank you.

20 MR. DELLINGER: Number 178.

21 SPEAKER: Hello. I heard that  
22 passionate speech. My name is Mike Malone. I

1 work for CPS Energy in San Antonio. We are  
2 municipally owned. We're the largest municipally  
3 owned power electric and gas company in the United  
4 States. We recycle over 97 percent of our coal  
5 residuals. We recycled approximately over 300,000  
6 tons last year. Essentially that amounts to about  
7 300,000 cubic yards of material diverted from  
8 landfills. Since the early '90s, we recycled over  
9 6 million tons of CCRs.

10 Recycling CCRs is a beneficial use. It  
11 lowers the cost to rate payers. We anticipate  
12 that this could cost up to over \$100 million in  
13 annual transportation to local landfills. CPS  
14 Energy expects to generate approximately 600,000  
15 cubic yards of CCRs per year over the next 20 years,  
16 totaling 25 million cubic yards over the next 50  
17 years.

18 CPS Energy believes that a Subtitle C  
19 designation would be counterproductive by  
20 increasing the amount of CCRs landfilled and  
21 impounded nationally because of the stigma that  
22 will be placed on CCRs. The failure of the 2008

1 Kingston power plant ash impoundment was an  
2 engineering issue and failure, not a material  
3 classification issue.

4 The increase in landfill impoundment of  
5 CCRs would only increase the chance of another  
6 Kingston-type failure, not reduce it. Thank you.

7 MR. DELLINGER: Number 41, 43, 207, 208,  
8 and 209.

9 SPEAKER: My name is Jacob George. I  
10 was a sergeant in the Army. I did three tours in  
11 Operation Enduring Freedom. I am now a homeless  
12 veteran by choice. I wrote a poem for the EPA  
13 that I want to read today. It's called "Dear EPA,  
14 Please Do Your Job."

15 Have you seen Arkansas sandstone? This  
16 rock is breathtaking. This rock is my home. Home  
17 used to be creeks and lakes where anybody could  
18 swim. Now the water tables are contaminated for  
19 cheap change. Trust me, I understand having too  
20 much to do. I did three tours in Afghanistan to  
21 protect you. But I did my job and now I'm home.  
22 It's your turn. Protect our water and protect my

1       Arkansas sandstone. Thank you.

2               MR. DELLINGER: Number 41.

3               SPEAKER: Good afternoon. My name is  
4       Donald B. Thomas. I have been selling fly ash,  
5       marketing fly ash, for over 22 years. I began  
6       working for a small, family-owned business and  
7       have marketed material in seven different states.  
8       Currently I cover an area of four states in the  
9       Southeast and have hundreds of customers.

10              Like many other people said today,  
11      pointed out the quality and benefits that fly ash  
12      can add to concrete, workability, increase in  
13      strength, and most importantly, improving  
14      durability, which can extend the life of concrete  
15      structures and reduce maintenance costs.

16              But I'm of the opinion that the strength  
17      requirements proposed by Subtitle C would  
18      significantly impact the longevity of our concrete  
19      structures, including roads, bridges, and  
20      buildings, and the stigma attached to this  
21      classification of fly ash as a hazardous waste  
22      under Subtitle C will affect the amount of fly ash



1       produced.

2                   To me, whether you're a salty old  
3       politician that's been running for office for 40  
4       years, or a junior high or high school student, to  
5       have a label that's unfair -- we all know what  
6       labels can do. And I think by classifying or  
7       labeling fly ash as a toxic hazardous waste, it's  
8       a label that will take, you know, years to  
9       overcome, and all the promotion in the world is,  
10      you know, going to be affected by that label.

11                  In a day and age when sustainability is  
12      of paramount importance to our environment, I  
13      believe that classifying fly ash under Subtitle C  
14      would be devastating to our future. I'm concerned  
15      about the cost of living, the restrictions imposed  
16      on my family and I, and the increased cost of  
17      electricity, the increased cost of building a  
18      home, the increased cost to stabilize and pave  
19      roads that we use every day. Fly ash reduces  
20      construction cost, it reduces CO2 emissions, and  
21      it improves sustainability.

22                  I strongly urge you to prevent the

1 regulation of fly ash under Subtitle C and not  
2 label that negatively. Thank you.

3 SPEAKER: Thank you for allowing me to  
4 testify. My name is Oneal Couvillion. I come  
5 from Walker, Louisiana. I'm here today to ask you  
6 to put stronger regulations on coal ash.

7 This is an article that tells about coal  
8 ash, what it is, what it contains, your arsenic,  
9 and stuff like that. It pollutes the air, water,  
10 and soil. Where is the positive? Thirty-four  
11 percent into landfills, 22 percent in surface  
12 impoundments, 37 in construction, 8 percent in  
13 mines. This is what happens when 1 billion tons  
14 -- 1 billion tons of coal ash destroys a town and  
15 environment.

16 This is an article from Scientific  
17 American dated December 13, '07, that states coal  
18 ash is more radioactive than nuclear waste because  
19 of what's burned. It concentrates it.

20 Now, I have this that says, "Do I Live  
21 Near Coal Ash?" This is for Louisiana residents.  
22 And my answer is, yes, I do. Okay. Big Cajun

1       Number 2 Power Plant, New Roads, Louisiana.

2               Now, the reason I say that is because --  
3       let me get there -- Waste Management -- this is a  
4       copy of an industrial waste code that's used by  
5       Waste Management given by DEQ. They get 2,839.93  
6       tons of ash -- that was last year -- and 16,832.3  
7       tons of carbon/carbon black/coke/coal. This was  
8       last year.

9               It's a shame. People who live around  
10      there really know what the dangers of coal ash is.  
11      Thank you very much.

12              MR. DELLINGER: I'm going to ask for  
13      Numbers 203, 204 or 208 here. And 210, 211, and  
14      212. Number 203.

15              SPEAKER: Good afternoon. My name is  
16      Nicholas Parnell. I'm a student at Southeastern  
17      Louisiana University. I'd like to thank you for  
18      the opportunity to express my concerns regarding  
19      the regulation of coal ash.

20              Like most of those offering testimony  
21      this week, I'm concerned about how easy it is for  
22      coal ash to enter into and contaminate our

1 environment. The fact that toxic heavy metals  
2 that are associated with coal ash can cause  
3 nervous system diseases and disorders strikes a  
4 personal chord with me.

5           When I was a child, I was diagnosed with  
6 a rare and deadly nervous system disorder called  
7 thermonuclearia, which means that my body is unable  
8 to naturally regulate its own internal  
9 temperature. There is no treatment or cure. The  
10 only way to ensure one's safety is to severely  
11 limit physical activity and exposure to heat, just  
12 as a diabetic has to monitor their sugar  
13 consumption.

14           Mild reactions can include itching,  
15 rashes, temporary loss of sensation of touch, or  
16 sporadic, painful shocking sensations throughout  
17 the body. Severe situations can lead to seizures,  
18 fainting and death even in environments where a  
19 person with a normally functioning regulatory  
20 system would feel only mildly uncomfortable.

21           As a child, when other kids ran and  
22 played at recess, I had to sit in the classroom

1       alone or near a teacher. When my siblings went to  
2       pick berries or go fishing or build a fort in the  
3       woods, I had to stay home alone. I grew up  
4       detached from society, bitter to all those who  
5       didn't have to live with the limitations I have.  
6       Having such minimal interactions with others means  
7       that today, as a college student, I'm still  
8       developing social skills that my peers acquired  
9       decades ago.

10               Although as an adult I now have greater  
11       control over my reactions, my disorder has been a  
12       hindrance in my career. I have had to pass up  
13       promotions and other opportunities that require  
14       working in an unprotected environment.

15               By strictly regulating coal ash, the EPA  
16       will be protecting all citizens from exposure to  
17       toxic chemicals associated with it and thus  
18       substantially reducing their chances of developing  
19       medical disorders like mine or even something  
20       worse.

21               Our only hope is that the EPA will fight  
22       to protect us, as the energy companies have used

1       their overwhelming power to force us, ordinary  
2       citizens, into a non-consenting, damaging  
3       relationship, just as pedophiles seek to victimize  
4       those who are weaker and unable to defend  
5       themselves. The proposals of Subtitle C are our  
6       only real protection from such environmental  
7       molestations. Thank you.

8               MR. DELLINGER: Number 210.

9               SPEAKER: Good afternoon. My name is  
10       David Griggs, from Dallas. I am an attorney and  
11       an adjunct professor of government at Brookhaven  
12       College. I'm also a former federal civil  
13       prosecutor with the FTC. Today, I am mostly here  
14       as a concerned citizen. Thank you for the  
15       opportunity to make some brief remarks during the  
16       comment period of the coal ash ruling.

17               As a former government employee, I'm  
18       certainly familiar with the regulatory process. I  
19       actually worked for a regulatory agency. I  
20       applaud you for the willingness to make this an  
21       open process and public, freely accessible. Thank  
22       you for that.

1           I want to commend you also for  
2     recognizing the very real health and environmental  
3     risks posed by the toxic coal ash. Against the  
4     seriousness of these risks, enforceable federal  
5     safeguards, not suggested state guidelines, are  
6     necessary to protect our communities.

7           From what I have learned, improved  
8     testing methods reveal that coal ash is  
9     significantly more toxic than originally thought  
10    and has an increased risk of leaking into our  
11    waterways. The levels of pollution, like arsenic,  
12    seeping from coal ash have been found to be  
13    significantly higher than what is considered safe  
14    for drinking water.

15           Therefore, I support Subtitle C of your  
16    choices, which would impose federal safeguards --  
17    excuse me -- federal standards for regulating coal  
18    ash as a special waste, requiring permitting,  
19    monitoring, standards of transport, phasing out  
20    wet ponds and so forth, while allowing for  
21    beneficial use.

22           I would also encourage you to include

1       that coal ash be in cessation until a government  
2       study has proven that the uses are not harmful in  
3       the immediate or long term to our public health  
4       and safety.

5               The status quo of state guidelines is  
6       not substantially different from what we have now.  
7       Few, if any, changes would be accomplished by  
8       that. State regulation is not enough. Despite  
9       the known toxicity of coal ash, a vast majority of  
10      states do not even require monitoring to see if  
11      coal ash is polluting the water.

12             That's why the federal government must  
13      act. Now is the time. If not, when? So don't  
14      miss this opportunity. For the sake of our health  
15      and safety, I urge you to adopt Subtitle C in your  
16      rule-making process. Thank you for the time.

17             MR. DELLINGER: Number 208.

18             SPEAKER: Hello. Thank you for allowing  
19      me to speak today. I have a note from my  
20      landlord. "I worked power plants for 26 years,  
21      coal burners. Fly ash is unhealthy for humans."  
22      That puts it really simply. This note was written



1 by, William Faddis, my neighbor in North Arkansas  
2 who couldn't be here today. He tells me often of  
3 his fellow boiler makers who are dead or dying  
4 because of coal ash. To say it is unhealthy is an  
5 understatement, and he would like for you to  
6 declare coal ash a hazardous waste. Thank you.

7 MR. DELLINGER: Number 211.

8 SPEAKER: Hi. My name is Jacob  
9 Delahoussage, and I'm from Lafayette, Louisiana.  
10 I'm here as a citizen. Thank you for the  
11 opportunity to speak.

12 I used to think that the movement to  
13 protect our environment was about stopping the  
14 clear-cutting of forests and the violent  
15 destruction of mountains using dangerous  
16 explosions. As I got more involved, I realized  
17 that it isn't just the mountains and the trees  
18 that can't speak up for themselves. We also need  
19 protecting because we don't always have the  
20 opportunity to speak up for ourselves.

21 Today, I'm here to speak for all those  
22 whose well water has been contaminated by toxins

1     like arsenic, mercury, lead, selenium, from coal  
2     ash. Coal ash needs to be regulated. It is a  
3     toxic, dangerous substance, and Subtitle C is the  
4     correct choice because it puts regulation in the  
5     hands of the federal government. It protects us.

6             I understand that this will likely  
7     increase cost for cement production, but I am more  
8     concerned with the health of my family, my  
9     community, and the future generations. Money is  
10    not the important issue here right now. Health  
11    is. Thank you.

12            MR. DELLINGER: Number 212.

13            SPEAKER: Thank you. My name is Ilan  
14    Levin. I'm senior attorney with the nonprofit  
15    Environmental Integrity Project. The  
16    Environmental Integrity Project's mission is to  
17    promote strict enforcement of the nation's  
18    anti-pollution laws. I want to thank you for the  
19    opportunity to let us speak today.

20            About halfway between Austin and Houston  
21    is a large coal-fired power plant. It's in  
22    Fayette County, Texas. It's called the Fayette

1       Power Plant. It's operated by the Lower Colorado  
2       River Authority. Groundwater sampling on the site  
3       shows levels of selenium, cobalt, and molybdenum  
4       that exceed drinking water standards.

5               The Texas Commission on Environmental  
6       Quality has notified a couple of neighboring  
7       landowners that their wells may be contaminated.  
8       But that's just the tip of the iceberg. The real  
9       issue and the real concern today is what we don't  
10      know because of the remarkable lack of groundwater  
11      monitoring in Texas and across the country.

12             The threat to public health and the  
13      damage to the environment that is documented by  
14      EPA and others in recent reports is mounting  
15      evidence of the accumulating harm from poorly  
16      regulated coal combustion waste disposal sites.  
17      The quantum leap in coal ash sites with documented  
18      contamination from the seven sites identified by  
19      EPA in its report to Congress in 1999, to about  
20      137 sites that we know about today, demonstrate  
21      that whenever we look, whenever we do groundwater  
22      monitoring, onsite or offsite, we invariably find

1       contamination at virtually every coal ash pond and  
2       landfill currently operating.

3               The Electric Power Research Institute,  
4       EPRI, and some state agencies stubbornly insist  
5       that coal ash is safe because it passes the EPA's  
6       toxicity leaching test, but the National Research  
7       Council warned in 2006 that the leach test was not  
8       an accurate method for measuring the leaching  
9       potential for toxic metals.

10              In closing, let me say that  
11       contamination of the environment and water  
12       supplies with toxic levels of arsenic, lead, and  
13       other chemicals is a pervasive reality at  
14       America's coal ash disposal sites because states  
15       are not preventing it.

16              The case for a national recommendation  
17       setting common-sense safeguards for states to  
18       meet, such as liners, monitoring, cleanup  
19       standards, could not be more persuasive, and the  
20       need for direct EPA involvement is clear. Thank  
21       you very much.

22              MR. DELLINGER: Numbers 213, 214, 215

1       and 216. Numbers 217, 218, 219, and 220. Numbers  
2       221, 222, 223, 224. Whoever has the lowest number  
3       come forward. It looks like 217.

4               SPEAKER: Hello. I'm John Gray, from  
5       Fayetteville, Arkansas, actually a little town  
6       called Greenland, which is a suburb of  
7       Fayetteville.

8               I'm a member of Clean Air Arkansas, who  
9       work for clean air; also a member of the Ozark  
10      Headwaters -- a member of the Ozark Headwaters  
11      organization, and I work to clean up the waterway  
12      of the White River that feeds into the lake that  
13      is our water supply up there.

14              So I'm very concerned that we do  
15      anything technically feasible to minimize any  
16      pollution that enters into our groundwater system.  
17      We have a lot of (inaudible) oils up there. Water  
18      leaches things into our water table and our  
19      drinking water very, very easily. So,  
20      consequently, any kind of a dump site or -- any  
21      kind of a dump site or contaminating process is of  
22      great interest to us.

1           One of the things that -- I'm glad I'm  
2   not on this panel up here because their decision  
3   -- they're faced with Option C, which, as I listen  
4   to this, will end the world as we know it, and  
5   Option D, which basically, according to my  
6   mentors, has little or no inspection capability.

7           One of my teachers was a guy named  
8   Edward Deningham. He taught that if you don't  
9   have frequent, random inspections by an  
10   independent party, with real teeth in it, you only  
11   have an illusion of quality control. That seems  
12   to be the fundamental flaw of Option D.  
13   Consequently, it is kind of a Hobson's choice, a  
14   very difficult decision the panel faces.

15           It's too bad there is not a third option  
16   where perhaps the recycling uses could be given a  
17   healthy title. Go ahead and use them and go ahead  
18   and provide this crutch to allow what looks to me  
19   like a dying industry, because burning ancient  
20   sunlight obviously will come to an end one day.

21           Any crutch that allows it to go too far  
22   into the future will work against converting to

1 safe alternatives that do not pollute. Thank you.

2 MR. DELLINGER: 218.

3 SPEAKER: Good morning. My name is  
4 Larry Ivy. I live near Fairfield, Texas. I've  
5 lived in the Fairfield area for the past 22 years  
6 and since my retirement in 1999, I have had the  
7 opportunity to have a little political stint as  
8 city councilman and mayor of Fairfield, but I've  
9 also had a small cattle operation on a 65-acre  
10 tract of land about 3 miles from the Big Brown  
11 Power Plant. I have two neighboring landowners  
12 who are physicians and live on their ranch near  
13 the power plant. Also, my only daughter and her  
14 only two children live on a ranch near Fairfield.

15 So I have a particular interest in this  
16 goings-on, over a period of several years, as to  
17 exactly what was going on. None of us have ever  
18 seen any evidence that any person or environment  
19 has suffered any ill effect caused by the  
20 operation of the Big Brown Plant and Mine.

21 I'll not try to address the technical  
22 determination of whether a substance, in this

1 case, coal combustion by-products, should be  
2 classified as a hazardous waste. But from what  
3 I've read, the EPA has studied this matter  
4 extensively over the past several years and has  
5 repeatedly determined that regulation of such  
6 products as a hazardous substance is not  
7 warranted. I've not seen any evidence that the  
8 chemical makeup of the by-products has changed  
9 through the years, and yet there are those who  
10 want to arbitrarily change the classification to  
11 that of a hazardous substance.

12 I would like to address the impact that  
13 an unwarranted reversal in this determination  
14 could have on my community in Fairfield and on  
15 Freestone County. The Big Brown Plant and Mine  
16 are the primary industry and provider of jobs in  
17 our county. The added cost of a hazardous  
18 substance regulation could possibly force the  
19 plant and mine out of business along with the  
20 company that markets the ash for beneficial use,  
21 which would be devastating to our local economy.  
22 At the very least, it's apparent that the cost of



1 all electricity -- all electric energy, not just  
2 that produced by coal-burning plants, would  
3 increase unnecessarily.

4 I ask you not to let a few isolated  
5 instances of improper handling or management  
6 result in regulations that punish those companies,  
7 communities, and states that are doing a good job  
8 of regulating, managing, and utilizing these  
9 by-products. It can be done properly and safely  
10 without the hazardous substance designation. I  
11 thank you.

12 MR. DELLINGER: Who has the lower number  
13 over there now? Can you show me that? 220.

14 SPEAKER: First of all, I would like to  
15 thank you for giving me the time to weigh in on  
16 this incredibly important issue. I feel very  
17 privileged as an ordinary Louisiana citizen to be  
18 able to take the time out of my week to travel to  
19 Dallas in order to exercise my civic duty.

20 I do find it unfortunate --

21 MR. DELLINGER: Can you state your name?

22 SPEAKER: Oh, I'm sorry. My name is

1 Jordan Bantuelle, and I'm from Louisiana.

2 MR. DELLINGER: Thank you.

3 SPEAKER: I do find it unfortunate that  
4 the federal government does not have the time, the  
5 resources, and the manpower to travel to New  
6 Roads, Louisiana, to ask each and every resident  
7 how they feel about the fact that the toxic,  
8 sometimes lethal amount of selenium has been found  
9 to exceed federal standards in their drinking  
10 water due to coal ash ponds.

11 It is unfortunate that we cannot all  
12 travel to Mansfield, Louisiana, and ask the  
13 residents how they feel about the fact that the  
14 coal ash storage contaminated four district  
15 groundwaters and groundwater monitoring has  
16 documented exceedances for lead and arsenic and  
17 selenium.

18 It is too bad that the good people from  
19 (inaudible) Louisiana could not all make it up  
20 here today to let us know how they feel about the  
21 fact that their groundwater has been contaminated  
22 with arsenic, to almost six times the maximum

1 level, and lead exceeding the maximum contaminant  
2 level.

3 All of these people could not make it  
4 here today. Perhaps they are at work. Perhaps  
5 they are working so that they can feed their  
6 families, as well as paying their medical bills.  
7 But I could make it here, so I hope it is not too  
8 presumptuous if I say a few words on behalf of the  
9 citizens of Louisiana.

10 People that live within one mile of an  
11 unlined coal ash pond have a 1 in 50 chance of  
12 getting cancer. That is 2,000 times higher than  
13 the EPA's acceptable level, while the people of  
14 Louisiana don't like having an unacceptable chance  
15 of getting cancer.

16 According to the EPA, living near a wet  
17 coal ash storage mine has health risks amounting  
18 to almost smoking as many as 20 packs of  
19 cigarettes a day. The people of Louisiana do not  
20 want to smoke 20 packs of cigarettes a day.

21 The toxins found in coal ash have been  
22 linked to numerous health problems, but we don't

1       want organ disease or cancer. We don't want  
2       respiratory illness or neurological damage. And  
3       perhaps most of all, we don't want our children to  
4       grow up with developmental problems.

5               When I was in grade school, I learned  
6       that the executive branch of our government  
7       enforces the laws and protects the citizens of  
8       America. Well, today, may democracy and common  
9       decency prevail over the power of profits. Please  
10      enact Subtitle C to regulate coal ash. Thank you  
11      very much.

12             MR. DELLINGER: 221.

13             SPEAKER: My name is Mike Griffith. I'm  
14      with the Port of Bay City in Matagorda County.

15             As technology improves with lower air  
16      emissions, the waste ash becomes even more toxic.  
17      Federal regulation is needed. We constantly learn  
18      of new contamination of rivers, streams, and  
19      groundwater. I am personally familiar with the  
20      proposed new plant in Matagorda County, Texas. It  
21      will produce 3 million pounds of ash each year  
22      that's going to be stored offsite.

1           This location is within the 100-year  
2 floodplain, it's in a hurricane zone, and it's  
3 adjacent to the Colorado River. This river  
4 provides freshwater to the second-largest nursery  
5 bay on the Texas Gulf Coast. It's home to the  
6 largest shrimping fleet on the Texas Coast as  
7 well.

8           There are not adequate rules or  
9 regulations to cover this waste ash disposal.  
10 This bay supports commercial shrimping, fishing,  
11 oystering, as well as recreational fishing. The  
12 fish bioaccumulate these toxins, and people eat  
13 the fish. Contamination will be devastating to  
14 the estuaries, commercial and recreational  
15 fisheries, and human health.

16           The EPA needs to follow Subtitle C to  
17 protect the environment and the citizens. Thank  
18 you.

19           MR. DELLINGER: Please state your name.

20           SPEAKER: My name is Eddie Pevehouse.  
21 Sorry. I'm here today representing Citizens  
22 Opposed to Power Plants. And I live in southern

1       Navarro County on a ranch that has been in my  
2       family for 137 years. I operate that ranch. And  
3       I hope that we can keep our -- our water and --  
4       and air clean enough for my chil -- my sons and my  
5       grandchildren to live on and operate that ranch  
6       someday.

7               The people of Navarro County have been  
8       increasingly approached by companies wanting to  
9       build both coal-fired and gas-fired power plants.  
10      We are already negatively affected by Big Brown  
11      and other large power plants to our south. Also,  
12      Navarro County is the home of Richland-Chambers  
13      Reservoir. It's a big fishing lake, but it also  
14      is the source of Tarrant County's water supply.  
15      And we cannot afford to have that water supply  
16      polluted and contaminated. Also, Richland Creek  
17      and Pin Oak Creek receive water from -- from that  
18      lake. And Pin Oak Creek runs across the back of  
19      my ranch.

20             I guess what I want to urge the EPA to  
21      do is to -- no, I don't guess. I know. Sorry  
22      about that. I want to urge the EPA to regulate

1 the coal ash as special waste. And I believe that  
2 would fall under Provision C of -- of the Clean  
3 Air Act. Thank you very much.

4 MR. DELLINGER: Thank you.

5 SPEAKER: My name is Diana Rawlins. And  
6 I am here from Navarro County, Texas. People  
7 United for the Environment in Navarro County would  
8 urge the EPA to regulate coal ash as special  
9 waste. It is a hazardous substance and should be  
10 strictly regulated. Much of Texas depends on  
11 water from little of Texas.

12 No issue is more relevant to the future  
13 of the state and its people and livestock than the  
14 preservation of non-polluted water sources. Coal  
15 ash management will have a major impact on water  
16 sources in Texas. The air issues in this area are  
17 well-known. The SIP, the State Implemented Clean  
18 Air Area, is directly impacted by pollution from  
19 the south because of our wind patterns. Yet TCEQ  
20 is permitting more and more power plants south of  
21 Dallas. Ellis County, south of Dallas, is already  
22 included in the non-attainment air area. Power

1       plants in Navarro would be located less than 30  
2       miles -- less than 30 miles from Ellis County.  
3       Affects of coal ash also affect air quality.  
4       Every attempt to use a strict standard of coal ash  
5       control should be used. We support the adoption  
6       of Subtitle C.

7               And on my personal behalf, I will  
8       mention to you that there is a place across the  
9       ocean called Europe. And a long, long time ago, a  
10      lot of men called Romans went there. And they  
11      made a lot of structures including Hadrian's Wall.  
12      And they built these structures with concrete. A  
13      lot of those structures are still there, some of  
14      them are still usable. And you know, there isn't  
15      any fly ash in any of that concrete.

16             MR. DELLINGER: Thank you. We're going  
17      to take a 10-minute break. And we'll continue at  
18      1:15.

19                     (Whereupon, at 1:05 p.m., a  
20                     luncheon recess was taken.)  
21  
22



(1:17 p.m.)

Good afternoon and thank you for attending today's public hearing on the Environmental Protection Agency's proposed rule regarding the regulation of coal combustion residuals that are disposed of in landfills and surface impoundments.

Before we begin the afternoon session, I would like to provide a brief description of how the logistics will go this afternoon in case those

1       that are arriving for the afternoon session missed  
2       the introduction this morning. Speakers, if you  
3       are pre-registered, you were given a 15-minute  
4       time slot when you are scheduled to give your  
5       three minutes of testimony. To guarantee that  
6       slot, we have asked that you sign in ten minutes  
7       before your 15-minute slot at the registration  
8       desk, which is just outside the doors. All  
9       speakers, those that have pre- registered and  
10      those that are walk-ins were given a number when  
11      you signed in today, and this is the order in  
12      which you will speak. I will call speakers to the  
13      front of the room, and I'll ask that they sit over  
14      in those chairs behind the podium. When your  
15      number is called, I'll ask that you move up to the  
16      speaker's podium and state your name and  
17      affiliation. And at that point, you can give your  
18      oral testimony.

19               Because there are many people today that  
20      have signed up to provide testimony, and to be  
21      fair to everyone, testimony is limited to three  
22      minutes. We will be using an electronic

1       timekeeping system, which is located at the  
2       speaker's podium and controlled up from our panel  
3       area. And we will also hold up cards to let you  
4       know when time is getting low. When we hold up  
5       the first card, this means that you have two  
6       minutes left. The second card means that you have  
7       one minute left. The third card, you will have 30  
8       seconds left. When the fourth card is held up,  
9       your time is up and we ask that you wrap up your  
10      testimony. When -- when you have completed  
11      speaking, please return to your seat behind the  
12      podium against the wall and remain there until all  
13      speakers in your group have completed their  
14      testimony.

15               If you have a copy of your written -- or  
16      of your oral testimony that you put on a piece of  
17      paper, please place that in the box by the court  
18      reporters. We will not be answering questions on  
19      the proposal. However, from time to time, any of  
20      us in the hearing panel may ask questions of you  
21      to clarify your testimony.

22               So as -- so as I just mentioned, if you

1       have brought a written copy of your comments that  
2       you are giving today, please leave a copy in the  
3       box by the court reporter. If you are only  
4       submitting written comments today, please put  
5       those in a box by the registration desk. If you  
6       have additional comments after today, please  
7       follow the instructions on the yellow handout and  
8       submit comments by November 19th, 2010.

9               Our goal is to ensure that everyone who  
10       has come today to present testimony is given an  
11       opportunity to provide comment. To the extent  
12       allowable by time constraints, we do -- we will do  
13       our best to accommodate speakers who have not  
14       pre-registered. Today's hearing is scheduled to  
15       close at 9:00 p.m., but we will stay later, if  
16       necessary.

17              If, however, time does not allow you to  
18       present your comments orally, we have prepared a  
19       table in the lobby where you can provide a written  
20       statement in lieu of oral testimony. These  
21       written statements will be collected and entered  
22       into the docket for the proposed rule, and will be

1       considered the same as if you presented them  
2       orally.

3               If you would like to testify but not yet  
4       -- but have not registered to do so, please sign  
5       up at the registration table. We are likely to  
6       take a few occasional breaks, but we are prepared  
7       to eliminate or shorten the breaks in order to  
8       allow as many people as possible to provide their  
9       testimony.

10              Finally, if you have a cell phone, we  
11       would appreciate it if you would turn it off or  
12       turn it onto vibrate. If you need to use your  
13       phone at any time during the hearing, please move  
14       to the lobby or somewhere outside the hearing  
15       room. We ask for your patience as we proceed. We  
16       may need to make some minor adjustments this  
17       afternoon. And we thank you for participating  
18       today.

19              And at this time, we're going to go  
20       ahead and continue with the -- the oral testimony.  
21       And I'd like to call Numbers 43, 46, 47, and 48 up  
22       to the chairs to my right. And Number 49, also.

1       Number 43.

2                   SPEAKER:  Good afternoon.  My name is  
3       Rick Wicker.  I'm with the -- I'm from Oklahoma  
4       City, Oklahoma.  Today, I'd like to speak in favor  
5       of Subtitle C, making coal ash a hazardous  
6       material.

7                   I first became aware of this issue in  
8       April when I took a trip to Bokoshe, Oklahoma,  
9       which is located about a mile and a half from a  
10      coal -- coal fly ash pit.  It is run by a company  
11      called Making Money Having Fun.

12                  I think the issue here is social justice  
13      because most of the coal fly ash pits are located  
14      in rural America and very small towns.  This  
15      particular coal ash pit is a mile and a half south  
16      of the town of Bokoshe in the direction of the  
17      prevailing winds.  So whenever a truck goes  
18      through town and then dumps at the pit, the plume  
19      of ash goes up into the air and is carried north  
20      toward the town.

21                  There are -- according to some of the  
22      locals, which we talked to, approximately 12 of 15

1 families located within a mile of the pit are  
2 suffering from different forms of cancer. The pit  
3 has been there for eight years. The pit is a  
4 reclamation project. They used to mine coal from  
5 that area and -- but now the pit is no longer a  
6 pit. It's a -- it's a mountain of -- 50 feet high  
7 of solidified coal ash.

8 Below the pit is a pond that has an  
9 electric blue color, which if you're from  
10 Oklahoma, you know that we don't have any electric  
11 blue ponds up there. So from that pit, there's  
12 also two -- two streams that flow out of that area  
13 that go downstream. One of the farmers downstream  
14 has reported that a lot of his cows were  
15 stillborn, that drink water from one of those  
16 streams.

17 The issue here is that the pit is not  
18 lined. It's -- it's exposed to the groundwater.  
19 The surface water downstream of the pit is -- is  
20 more likely contaminated. But there is no state  
21 agency that's involved in monitoring or looking  
22 into the groundwater, the surface water, or the

1       air. And my main point is that the states are not  
2       going to take care of this problem until it's  
3       declared a hazardous material. And so that's the  
4       way it is. Thank you. Thank you very much.

5               MR. BEHAN: Thank you, sir. Number 46.

6               SPEAKER: Good afternoon. I'm Gerald  
7       Butcher. I'm with Western Farmers Electric  
8       Cooperative. Western Farmers serves rural  
9       Oklahoma, and we've done that for over 69 years.  
10       As a non-profit wholesale power supplier of  
11       electricity, Western Farmers provides power to  
12       nineteen member co-ops who distribute that to  
13       two-thirds the state of Oklahoma. This powers  
14       small towns, communities and farms, and people in  
15       rural areas of Oklahoma.

16              There's an old painting hanging in  
17       Western Farmers headquarters that shows the joy on  
18       the faces of a rural family when they first  
19       receive electricity in their rural farmhouse. And  
20       the caption comes from an old Tennessee farmer,  
21       who said in the '40's, "Brothers and sisters, I  
22       want to tell you this, The greatest thing on earth



1       is to have God in your heart. And the next  
2       greatest thing is to have electricity in your  
3       house." This painting is more than a sentiment.  
4       It depicts the impact of electricity on those  
5       people in rural areas that rely on cheap  
6       electricity.

7               During the 1930's and '40's, parts of  
8       rural Oklahoma did not have electricity in rural  
9       areas. That changed when rural electric  
10      cooperatives were formed. It was an unbelievable  
11      blessing to rural areas in small towns and  
12      communities who now had power. It opened a world  
13      to them by providing power for radios, telephones,  
14      and new farming techniques.

15             As a third generation of Oklahoma, I can  
16      clearly recall my elderly family telling stories  
17      of the challenges of rural life during the Great  
18      Depression and how that finally changed when  
19      electric power was supplied to them. In short,  
20      the cheap power my grandfather and others received  
21      made them a real part of the world.

22             Today, Western Farmers is able to

1 provide low cost electric power in parts -- in  
2 part due to a coal-fired power plant, one unit --  
3 it's a 450 megawatt unit at Fort Towson, Oklahoma.  
4 It generates approximately 90,000 tons of CCR  
5 annually. Over 70 percent of this is reused for  
6 road beds, concrete, dry wall, and other everyday  
7 products. The remaining CCR is disposed on site,  
8 which is monitored by a groundwater monitoring  
9 system. No leaching or environmental incidents  
10 have ever occurred in 30 years of this plant's  
11 operation.

12 If the EPA decides to regulate CCR more  
13 stringently, there will be several consequences.  
14 First, the cost of compliance will increase.  
15 Second, Western Farmers sells CCR to other  
16 companies who put it to beneficial use. With the  
17 stigma attached to hazardous waste label, this is  
18 going to change and prohibit reuse. And finally,  
19 co-op systems are relatively small and are  
20 prohibited from maintaining large capital  
21 reserves. When the costs for running their  
22 businesses suddenly increase, like they would if

1 CCR is more stringently regulated, there's little  
2 or no cushion to mitigate the increased costs, so  
3 rates or borrowing money as -- as necessary for  
4 these cooperatives.

5 In conclusion, Western Farmers  
6 respectfully requests that EPA maintain the Bevill  
7 amendment and regulate the disposal of CCR under  
8 Subtitle D. Thank you.

9 MR. BEHAN: Thank you. Number 47.

10 SPEAKER: Good afternoon. Welcome to  
11 Dallas. Thank you for being here and thank you  
12 for providing this opportunity for us to provide  
13 comments into the docket. My name is Usha Turner.  
14 I'm the director of environmental policy and  
15 reporting for Luminant, headquartered here in  
16 Dallas. Luminant generates electricity in Texas  
17 with over 18,300 megawatts of electric generation,  
18 including over 8,000 megawatts of base load  
19 coal-fueled electric generation, using native  
20 Texas lignite and western sub-bituminous coal.  
21 This makes Luminant one of the nation's largest  
22 coal based generators. Luminant's commitment to

1 environmental excellence in Texas is  
2 well-demonstrated. And with strong encouragement  
3 from EPA and others, Luminant has invested  
4 significant efforts in recycling nearly 40 billion  
5 pounds of coal combustion residues, or CCRs, to  
6 date, with 2.2 billion pounds in 2009 alone.

7           This has allowed other industries to  
8 beneficially reuse the CCRs, such as the  
9 construction industry's use in concrete for  
10 roadways, among many other applications that  
11 you've heard here today. As you've also heard  
12 here today and as you know, on four separate  
13 occasions, most recently in the year 2000, EPA  
14 made a regulatory determination that concluded  
15 that Subtitle C of RCRA is not the appropriate  
16 regulatory regime for regulating CCRs. And that  
17 regulation as non-hazardous waste by the states is  
18 the appropriate option for ensuring the safe  
19 management of these materials while preserving  
20 reuse.

21           The state of Texas, through the Texas  
22 Commission on Environmental Quality, already has a

1 comprehensive regulatory program for the storage,  
2 the disposal of CCRs, that oversees the design,  
3 construction, monitoring, reporting, and final  
4 closure of all CCR disposal facilities.

5 The regulation of CCRs under Subtitle C  
6 would not only strip states of the ability to cost  
7 effectively regulate CCR disposal practices and  
8 potentially cost utilities like Luminant hundreds  
9 of millions of dollars, but would also eliminate  
10 the use of CCRs and the businesses that utilize  
11 them, again, as you've heard here today several  
12 times.

13 Any hazardous waste-like program that  
14 directly -- excuse me. Any hazardous waste-like  
15 program would directly or indirectly result in the  
16 elimination of the recycling markets for CCRs,  
17 increase the use of virgin natural resources,  
18 contribute to negative environmental benefits, job  
19 losses, and increase in electricity cost and  
20 energy use.

21 In summary, Luminant, in addition to  
22 over 200 members of the U.S. Congress, 43 states,

1       and numerous federal agencies strongly oppose the  
2       regulation of CCRs as a hazardous material, and  
3       recommends that EPA continue to allow states to  
4       run their own programs like the model state of  
5       Texas that you've heard about here today. Thank  
6       you for this.

7               MR. BEHAN: Thank you. Number 48.

8               SPEAKER: Good afternoon. My name is  
9       Paul Rolke. I own a 2,300-acre ranch about  
10      halfway between Dallas and Houston. I'm also the  
11      president of Robertson County: Our Land, Our  
12      Lives, a group of concerned citizens which tried  
13      to get the TCEQ to reduce the pollution from the  
14      proposed and now constructed Oak Grove lignite  
15      burning power plant, which our previous speaker  
16      works for that company.

17              It is clear that the disposition of coal  
18      ash needs additional regulation. The science  
19      speaks for itself. The question is, are  
20      enforceable federal rules necessary, or will  
21      federal guidelines be sufficient to protect Texans  
22      from harmful pollution? I believe my experience

1       with the coal plants in my county provides  
2       guidance as to whether the State of Texas and the  
3       TCEQ will do their job without enforceable federal  
4       standards.

5               Our experience with the Oak Grove plant  
6       permitting process, upon review of the PSD permit  
7       for Oak Grove, EPA Region 5 sent letters to the T  
8       -- TCEQ expressing concerns about specific aspects  
9       of the permit. The TCEQ took no action respecting  
10      these concerns. Likewise, regarding an amendment  
11      to the water permit, TCEQ was nonresponsive to EPA  
12      concerns and even refused to hold off on approving  
13      the permit to allow the EPA to submit further  
14      information. The TCEQ appears to be in the habit  
15      of simply ignoring the feedback from the EPA when  
16      we have a circumstance that at least with the PSD,  
17      the tech -- the EPA is allowing TCEQ to administer  
18      the regulations that are EPA's.

19             At a broader level, new regulations  
20      continually lag behind the science. There's a  
21      cycle in which the science reflects a need for  
22      more stringent regulations to adequately protect

1       the public. The EPA goes through the rule-making  
2       process for a couple of years, a compromise is  
3       made, and the rules are enacted. Then sooner or  
4       later, better scientific research again shows the  
5       need for stricter regulation. And the cycle  
6       repeats.

7               The scientists who did the research  
8       often find the final regulations less stringent  
9       than what the science demands. So in a  
10      circumstance where many feel the EPA regulations  
11      fall short of what is needed out of the myriad of  
12      federal regulations, is there one example that the  
13      TCEQ deciding on their own initiative that federal  
14      regulations are not stringent enough to protect  
15      the citizens of this great state and taking action  
16      on their own initiative to implement a more  
17      protective rule. There may be. I can't find one.

18             I believe that if you consult with your  
19      co-workers in Region 5 (sic?), they will tell you that we  
20      can barely make them enforce the existing  
21      enforceable rules. Guidelines will not lead to  
22      acceptable regulation. I would also ask them, if



1 I were you, do they think the TCEQ is  
2 constitutionally capable of creating and strictly  
3 enforcing rules to protect the public and  
4 environment.

5 My experience with the, quote,  
6 beneficial use of coal ash in my county -- a  
7 little less than ten years ago, the county added  
8 truckloads of coal ash to the dirt road that leads  
9 to my ranch. All of the silica works great as a  
10 stabilizer when it rains. On the other hand, I  
11 have no way of knowing what the health risks are.  
12 I can speculate. I know that a coal boiler cooks  
13 elements down to a particulate size that in the  
14 natural world, only a volcano will do at that  
15 scale. And I know that those tiny particles are  
16 far less likely to be captured by my internal  
17 filtration system than the dust I would normally  
18 inhale.

19 The net -- net is -- the --  
20 notwithstanding what you just heard, as far as I  
21 can tell, this position of coal ash waste is not  
22 regulated in the state. Fly ash is regulated in

1 the air permits. But the ash itself, they can  
2 pretty much do whatever they want to with it.  
3 Thank you very much. Sorry to run long.

4 MR. BEHAN: Thank you. Number 49. Is  
5 Number 49 here?

6 SPEAKER: Hi, good afternoon. My name  
7 is Jody Harlan. I'm from Yukon, Oklahoma. I'm  
8 the communications director at a state agency that  
9 serves people with disabilities. And I took off  
10 work today to talk with you about this important  
11 issue.

12 I would like for the EPA to recognize  
13 the public health and environmental hazards caused  
14 by coal ash and the impact on the communities in  
15 Oklahoma. And ask you to regulate it under  
16 federal guidelines Subtitle C of the RCRA. This  
17 is the only option that establishes federally  
18 enforceable standards needed for oversight and  
19 protection of the citizens and -- and the water.

20 In Oklahoma, state regulation and  
21 enforcement are notoriously weak or nonexistent.  
22 The Oklahoma Department of Environmental Quality,

1       the Water Resources Board, and the Oklahoma  
2       Department of Mines each insist that the other is  
3       responsible for regulation. And to regulate under  
4       Subtitle C would be following EPA's own  
5       guidelines.

6               A 2008 EPA report found that coal ash  
7       contains significant carcinogens and retains heavy  
8       metals in far higher concentrations than those  
9       found in coal. An EPA risk assessment said -- as  
10      I think you've heard here already today -- that  
11      living near a coal ash site is more dangerous than  
12      smoking a pack of cigarettes each day. Coal ash  
13      has been linked to organ disease, respiratory  
14      illness, neurological damage, and developmental  
15      disabilities.

16             And we're here today -- at least one of  
17      the reasons the federal regulation process  
18      started, from what I understand, because of the 1  
19      billion gallons of sludge that spilled onto  
20      adjacent properties in Kingston, Tennessee at  
21      Christmas in December 2008. So what I want to ask  
22      is that you consider the Subtitle C provisions.

1                   And my research of this really big bill  
2       under Subtitle C: Coal ash sites would get  
3       mandatory permits and take basic safety  
4       precautions. Wet coal ash ponds would be phased  
5       out. Companies operating coal ash sites when the  
6       rules go into effect would have to assume  
7       liability for the damage that they do -- the harm  
8       that their facilities cause in our communities in  
9       Oklahoma. And existing dams would be subject to  
10      increased inspection by certified engineers.  
11      Finally, coal dumped into the fill sites, like the  
12      one in Bokoshe, would be regulated as landfills,  
13      not allowed to masquerade as recycling.

14                  So thank you for being in Texas today.  
15      This is the first time I've ever done anything  
16      like this. I'm sure that's true of others. Thank  
17      you very much for listening.

18                  MR. BEHAN: Thank you. Numbers 50, 51,  
19      52, 53, 54, if you could come up and take a seat  
20      in the chairs. 121 and 204, if you could come up.  
21      Number 50.

22                  SPEAKER: Good afternoon. My name is

1 Lonnie Johnston, and I'm a concerned citizen. I  
2 live in Bossier City, Louisiana. I've been in the  
3 construction industry for 28 years and have  
4 extensive experience with coal combustion  
5 products, or as we call them, fly ash. I worked  
6 for one of the largest concrete companies for 22  
7 years. I assisted in the installation and testing  
8 of the first fly ash silo in our area. I was part  
9 of the approval process in our district for the  
10 Louisiana Department of Transportation, along with  
11 the introduction of its beneficial use to our  
12 commercial and residential customers.

13 I have extensive experience in the use  
14 of fly ash in concrete, and have been personally  
15 involved in creating mixed designs for beneficial  
16 use. As a manager in the concrete industry, I was  
17 also involved with the day-to-day policy and  
18 procedures and compliance with all safety and  
19 health hazards. While dealing with many issues  
20 over 22 years, I cannot recall having one safety  
21 or health issue related to fly ash during  
22 beneficial use.

1           In 2004, I went to work for one of the  
2       largest marketers of fly ash in the country as a  
3       technical sales representative. It was a perfect  
4       fit for me since I knew the material and its many  
5       uses. Knowing most of the concrete producers in  
6       the state of Louisiana and their uses was also a  
7       plus. For the last six years, I have dealt  
8       directly with all the users of fly ash in the  
9       state of Louisiana and their many different  
10      beneficial uses of ash and do not recall a single  
11      safety or health issue, which brings me to my  
12      point.

13           As you can see, I've experience and  
14      knowledge of the beneficial use of ash. Also, I  
15      have firsthand experience in how companies will  
16      react to the reclassification of fly ash as a  
17      Subtitle C hazardous material. Your intentions  
18      may be to regulate CCPs at the landfill area,  
19      when, in fact, you will be impacting the  
20      beneficial use of the recycled and reusable  
21      product. I have many concrete producers in this  
22      state that will -- that have stated that in the

1       event the EPA classifies fly ash as a Subtitle C  
2       hazardous material, they will discontinue the use  
3       of fly ash in their concrete plants.

4               Your actions will decide whether we will  
5       continue using fly ash beneficially or whether we  
6       will double the landfills at our power plants and  
7       increase our cost of electricity, effectively  
8       bringing the use of one of the most beneficial  
9       recycled products to an end. I strongly urge you  
10      to classify coal combustion products under  
11      Subtitle D, so we can continue to use them  
12      beneficially.

13             MR. BEHAN: Thank you. Was 51 here?  
14      52?

15             SPEAKER: In 1990, the Texas Coal Ash  
16      Utilization Group was formed by marketers,  
17      academia, and local Texas utilities to promote the  
18      beneficial reuse of coal combustion products.  
19      Through our outreach with the TCEQ, a guidance  
20      letter was issued in 1995 that it recognized CCPs  
21      as the materials and not considered a solid waste.  
22      This letter was instituted as an agency rule in

1 '01 and has been a key to the overwhelming success  
2 of CCP utilization year after year.

3 Prior to this rule, the use of CCPs in  
4 Texas was 20 to 30 percent of annual production.  
5 This low utilization rate was contributed to the  
6 reporting guidelines that were in place. But more  
7 importantly, there was a stigma in the market  
8 because CCPs were treated as a solid waste and not  
9 a product. The current EPA Option 1 proposal for  
10 managing CCPs under the RCRA C program would set  
11 our industry back in Texas as it was prior to the  
12 TCEQ recognizing CCPs as a product and not a solid  
13 waste. Since the new guidelines have been in  
14 place by the TCEQ, Texas has recycled more CCPs  
15 than any other state. And now the utilization is  
16 60 to 70 percent of utilization -- of production  
17 annually.

18 From prior public statements, EPA  
19 clearly does not believe that a stigma exists or  
20 potentially would come into play if the RCRA C  
21 proposed option becomes regulation. However, in  
22 '05, the EPA has a report, Review of Texas



1 Regulation, Standards, and Practices to the Use of  
2 CCPs, states this stigma effect has a potential  
3 threat that could impact future CCP utilization in  
4 Texas.

5 In regards to liability, utilities are  
6 highly considering not allowing CCPs to leave the  
7 site for fear of future litigation. The same  
8 concern is being reserved -- observed from end  
9 users, as well. The potential of future  
10 litigation is too much at risk for some CCP -- CCP  
11 producers and utilizations.

12 Technical and cost savings. Specific to  
13 Texas, the aggregates that are used for the  
14 production of concrete are highly reactive. ASR  
15 is a material related distress that has resulted  
16 in premature deterioration of concrete. Texas DOT  
17 highly relies on the use of fly ash for the  
18 mitigation of ASR. If the Texas -- if TxDOT does  
19 not have these materials at hand, they will have  
20 an increase of 12.7 million tons annually a year.

21 In regards to the economic assessment,  
22 last, in EPA's economic assessment, EPA determined

1       that CCP utilization would actually increase under  
2       the RCRA C proposal option. The assessment by EPA  
3       assumes utilities will be motivated to have CCP  
4       utilized rather than go to their onsite landfills  
5       due to increased cost. This thought by EPA  
6       assumes that there is no cap on the amount of tons  
7       that can be utilized, especially in concrete. EPA  
8       did not consider the fact that there are technical  
9       limitations to the utilization of CCPs.

10               TxDOT has limitations at 35 percent  
11       maximum replacement, for example. This is a  
12       significant oversight by EPA in their assessment  
13       and needs to be reconsidered. The fact is, there  
14       is a cap on what can be utilized; and that is  
15       dependent on the annual concrete market and a  
16       percentage replacement limitations.

17               I encourage the EPA to assess this item  
18       -- of increased utilization that has been publicly  
19       stated. In summary, TCAUG strongly supports and  
20       encourages the EPA to elect the RCRA D proposal  
21       option to manage CC -- CCPs per our comments  
22       addressed to the EPA panel this afternoon. Thank

1       you.

2               MR. BEHAN: Thank you. Sir, could you  
3       state your name for the record?

4               SPEAKER: My name is Mike Silvertooth.  
5       I'm president of TCAUG.

6               MR. BEHAN: Great. Thank you, sir.  
7       Number 53.

8               SPEAKER: Good afternoon. My name is  
9       Ryan Rittenhouse. I work with Public Citizen  
10      Texas, based out of Austin. We are a national  
11      consumer interest organization. Thank you for  
12      giving us this opportunity to speak today.

13              You're the EPA. You're the  
14      Environmental Protection Agency. Your job is to  
15      protect public health and the environment. Your  
16      job is not to ensure that coal companies can not  
17      irresponsibly increase their profits at the  
18      expense of public health and the environment. So  
19      we are calling on you to adopt the most stringent  
20      regulation possible, which is in this instance  
21      Subtitle C.

22              I would also go further to say that

1       Subtitle C isn't good enough. That's the bare  
2       minimum of what should be done right now. For  
3       instance, as -- it's not looking at coal ash waste  
4       as being deposited back into mine-mouth areas.  
5       And many of the sites in Texas -- not all of them,  
6       but a lot of them -- are these mine-mouth  
7       reclamation sites where they're dumping the coal  
8       ash right back -- excuse me -- into the mine once  
9       they're done with it. This is also lignite coal,  
10      which is the dirtiest coal, and has some of the  
11      worst and highest levels of these contaminants.  
12      So this is a really big problem right here in  
13      Texas.

14               And even Subtitle C won't address all of  
15      the -- these issues. So we need more than just  
16      Subtitle C. And Subtitle C should definitely be  
17      what you adopt now. And you should be looking  
18      towards the future to take into account all these  
19      other ones, as well.

20               Now, we have a lot of coal plants in  
21      Texas. You've probably seen this report already.  
22      I'll leave this with you as well, though. This is

1       the report that EIP just put out, In a Harm's Way,  
2       Lack of Federal Coal Ash Regulations Endangers  
3       Americans and Their Environment. In this report,  
4       it -- they studied coal plants all around the  
5       country and saw that almost all of them, if not  
6       all of them, showed elevated levels of many of the  
7       toxic carcinogens and other contaminants that are  
8       in coal waste, leaching into the groundwater and  
9       leaching into the nearby areas.

10               The only one they had data for on Texas  
11       was the Fayette coal plant, and that was only  
12       because Fayette -- because of a settlement had had  
13       to do special monitoring. And that was the only  
14       reason TCEQ had that data. They didn't have data  
15       for EIP, for the other 18 coal plants in Texas.  
16       There is nothing going on. We don't know what's  
17       out there. And we don't know what danger we're  
18       facing. And it's one more example -- as I'm sure  
19       you've heard in a long list of examples -- of how  
20       TCEQ has been utterly failing the people of Texas.

21               We need EPA to come in, and we need them  
22       to set federally enforceable regulations that all

1 of these facilities will have to comply with. If  
2 not, it's just business as usual, and you may as  
3 well not do anything. Adopting Subtitle D will do  
4 little, if anything, to improve this problem. So  
5 with that, I highly encourage you to adopt  
6 Subtitle C. I would further encourage you to  
7 adopt something stricter if possible. And thank  
8 you for your time.

9 MR. BEHAN: Thank you. Number 54.

10 SPEAKER: My name is Thomas Adams. I'm  
11 the executive director of the American Coal Ash  
12 Association. I want to thank you for the  
13 opportunity to participate here today.

14 In the EPA proposal of June 22nd, the  
15 agency raises concerns over the use of flue gas  
16 desulfurization gypsum, also known as FGD gypsum,  
17 for agricultural applications. FGD gypsum is not  
18 an ash. Rather, the material is a synthetic form  
19 of gypsum that is produced by scrubbers that are  
20 installed on coal-fired plants to control SOX and  
21 NOX air emissions. This form of gypsum is  
22 slightly more pure than mined gypsum.

1                   Research by the U.S. Department of  
2   Agriculture in numerous academic institutions has  
3   shown that FGD gypsum is safe and beneficial for  
4   use on farms which grow our food. The USDA is in  
5   the middle of an extensive risk assessment  
6   scheduled for completion in 2012. None of the  
7   research to date has given the USDA, academic  
8   institutions of the agricultural community cause  
9   for concern.

10                  The EPA itself has been a supporter of  
11   the use of FGD gypsum up to now. As recently as  
12   November of 2009, the EPA has supported workshops  
13   to help promote the use of FGD gypsum by farmers.  
14   Farmers have found this material to be a valuable  
15   resource in chall -- in the challenges of no-till  
16   farming, soil erosion, and -- and water runoff,  
17   and enhancing crop growth and maturity.

18                  However, the June 21 proposal cast doubt  
19   on the future of the use of FGD gypsum on our  
20   farms due to concern over, quote, excessive  
21   quantities; that is, field applications of FGD  
22   gypsum in amounts that exceeds scientifically

1 supported quantities required for enhancing soil  
2 properties and/or crop yields, end quote. The  
3 source of this concern is somewhat curious. What  
4 farmer is going to apply excessive amounts of any  
5 material that would poison the soil and crops that  
6 provide his livelihood. Such action would be akin  
7 to committing financial suicide.

8 Reports from those who market FGD gypsum  
9 indicate the stigma of any kind of hazardous waste  
10 regulation for disposal of CCRs under Subtitle C  
11 would result in a rapid declivity in the use of  
12 FGD gypsum. Farmers are careful to use materials  
13 that are effective economically and most  
14 importantly safe. Markets purchasing the crops  
15 must be satisfied that those crops are not tainted  
16 in any way. Continued use of a product that may  
17 be considered a hazardous waste under certain  
18 circumstances is totally unacceptable to farmers.

19 In addition, there's a great concern  
20 among those currently using FGD gypsum, that their  
21 property may become tainted by a hazard waste --  
22 hazardous waste stigma, which may render that



1 acreage of little or no value in resale. Farmers  
2 will not take time or make the effort to peel back  
3 the intentions or EPA exceptions of the new  
4 regulations. Hazardous means hazardous. And the  
5 stigma is real.

6           The EPA has made a commitment to work  
7 with the Office of Surface Mines on the use of  
8 CCRs for mine fill applications. We applaud and  
9 encourage this effort. And we urge the EPA to  
10 take a similar approach with the use of FGD  
11 gypsum, and set aside this beneficial use for a  
12 joint effort with the U.S. Department of  
13 Agriculture. USDA has the science. We urge you  
14 to turn to the experts in your sister agency and  
15 use their work in consideration of the beneficial  
16 use of FGD gypsum on the farms of America.  
17 However, first and foremost, you must avoid a  
18 Subtitle C regulation of any kind to keep the  
19 stain of a hazardous waste rule off of the food we  
20 eat. Thank you.

21           MR. BEHAN: Thank you. Number 204.

22           SPEAKER: My name is Bill Saunders. And

1 I'm a Sierra Club volunteer from Little Rock. The  
2 coal ash that we're talking about is a huge  
3 problem. To give us an idea of its magnitude,  
4 three days ago in a New York Times editorial, they  
5 said, quote, America's power plants produce 130  
6 million tons of this stuff each year. That's  
7 enough to fill a train of boxcars stretching from  
8 Washington, D.C. to Australia.

9           There are a lot of myths and  
10 misinformation put out by the special interest  
11 about coal ash. A primary one is that it's just  
12 about like dirt. Well, that's not the case at  
13 all. With the latest techniques of EPA testing,  
14 they have found commonly in the monitoring that's  
15 been done that arsenic can run up to 1,800 times  
16 the federal drinking water standard, and that  
17 selenium can be 580 times the standard, and that  
18 household garbage is regulated more than the patch  
19 work of the states on coal ash.

20           Other points about this myth is that  
21 coal ash toxins can now leach into water at levels  
22 that were -- that are much higher than originally

1       understood. The levels of arsenic can be 1,000  
2       times higher than what is safe for drinking water.  
3       The -- an EPA conducted study shows that living  
4       near a wet coal ash storage pond is more dangerous  
5       than smoking a pack of cigarettes each day.

6               Finally, there's a myth that the  
7       proposed regulations by the EPA would kill the  
8       industry. Well, this is the same scare tactic  
9       that we so often hear without substance that has  
10      been disproven many times. For examples, the EPA  
11      now has regulations for electric arc furnace dust.  
12      And we need the federal regulations to protect the  
13      people. Thank you.

14             MR. BEHAN: Thank you. Numbers 55, 56,  
15      57, and 59.

16             SPEAKER: Good afternoon. My name is  
17      Kyle Crake. I'm the president of PMI Ash  
18      Technologies. PMI Ash is a small business with 21  
19      employees. It's a clean technology company that  
20      focuses on fly ash beneficiation processes. We  
21      have developed three different ash recycling  
22      technologies.

1           Our technologies currently have a  
2       capacity to produce 1 million tons of marketable  
3       fly ash per year for use as a replacement for  
4       portland cement in concrete. PMI has been awarded  
5       greenhouse gas emission credits through the  
6       Massachusetts Greenhouse Gas Initiative. We have  
7       won technical and environmental recognition from  
8       the EPA Southeastern Electric Exchange, the DOE,  
9       Commonwealth of Virginia, and the State of North  
10      Carolina.

11           PMI Ash supports EPA's management of  
12      CCRs under RCRA's Subtitle D non-hazardous waste  
13      program. This would provide uniform rules and  
14      higher standards for the utility and CCR  
15      industries. Implementation of the Subtitle D  
16      option will protect human health and the  
17      environment with the same standards and without  
18      the negative impacts caused by Subtitle C.

19           The only issue is whether the standards  
20      can be enforced uniformly. Rather than a three-  
21      to four-year implementation as proposed by EPA's  
22      Subtitle D option, we suggest that they be able to

1 be enforced more quickly via a legislative  
2 solution that would give the EPA full authority to  
3 regulate CCRs similar to municipal solid waste.

4 PMI Ash supports strong standards via  
5 Subtitle D of RCRA by enacting federal enforcement  
6 authority such as recommended by the congressional  
7 Research Service entitled "Regulating Coal  
8 Combustion Waste Disposal: Issues for Congress."

9 PMI Ash is firmly against the  
10 classification of CCRs as special waste under  
11 RCRA's Subtitle C hazardous waste program. EPA  
12 has overreached with its Subtitle C proposal.  
13 EPA's approach will cost this country jobs, all  
14 for the purposes of obtaining enforcement  
15 authority. There are better ways that exist to  
16 obtain enforcement authority which allow U.S. jobs  
17 to grow.

18 The CCR recycling industry has noted to  
19 the EPA that the Subtitle C classification will  
20 produce a stigma that will negatively impact the  
21 nation's best recycling story. The industry has  
22 supplied specific advertisements, bidding

1 packages, delayed or deferred projects showing  
2 that the stigma does exist. EPA continues to ask  
3 for evidence, while all the same ignoring the  
4 evidence given.

5 PMI has seen the impact of the stigma.  
6 PMI has actively pursued several potential  
7 beneficiation projects. We have heard from  
8 prospective customers that they will not consider  
9 a project until a final rule is out and it is  
10 non-hazardous, due to the potential tort liability  
11 that could be associated with the sale of fly ash  
12 under Subtitle C. We have also been talking with  
13 companies about raising capital for projects.  
14 While the companies like our CCP recycling  
15 business, they are not willing to invest with the  
16 exposure to a Subtitle C classification.

17 EPA's own scenarios that incorporate  
18 health, environmental, and commercial factors show  
19 that the downside in both recycled volume and  
20 economic value is significantly greater than the  
21 upside. The upside scenario is an 11 percent gain  
22 in sales for \$84 billion in value. The stigma

1       scenario is an 18 percent loss in sales for a \$233  
2       billion decrease in economic value.

3               In conclusion, the cost of Subtitle C  
4       implementation, plus the associated loss of  
5       recycling, is too great a tradeoff for EPA  
6       enforcement authority, especially when it can be  
7       obtained on a legislative basis. Thank you.

8               MR. BEHAN: 56, 57. This is 57.

9               SPEAKER: My name is Jordan Macha. I am  
10       a Louisiana resident and a representative of the  
11       Sierra Club.

12               For the past four months, Louisiana has  
13       faced an environmental disaster of enormous  
14       magnitude in the Gulf. One of the primary reasons  
15       for the disaster was the lack of strong federal  
16       regulation and oversight of the oil and gas  
17       industry. Like the TVA coal ash spill in December  
18       of 2008, our communities and residents are paying  
19       a price for a man-made disaster that is greatly  
20       affecting the livelihood of our citizens.

21               We need the EPA to step up and federally  
22       regulate coal ash. Louisiana has been a fossil

1       fuel dumping ground for our nation for far too  
2       long. Our state agencies have not done the  
3       appropriate job at managing industries, and the  
4       administration must take action.

5               I ask that the EPA adopt Subtitle C and  
6       hold the industry accountable for costs incurred  
7       to public health. In Louisiana alone, we have 11  
8       coal ash landfills that are polluting surrounding  
9       water sources, including two major river sources  
10      for the state. Please don't put profits over the  
11      health and welfare of our communities.

12             It has been argued today that coal ash  
13      is safe and can be recycled into products that are  
14      publicly used. Several decades ago, asbestos was  
15      considered safe and was utilized in public  
16      projects. Now those communities are facing the  
17      consequences when their only crime is living in  
18      their community.

19             We don't yet know the long-term effects  
20      of these actions. Please don't put our citizens  
21      at risk without knowing the real facts of the  
22      industry's actions. Thank you.



1 MR. BEHAN: 79.

2 SPEAKER: Good afternoon. I'm Rogers  
3 Dennis, a retired electrical engineer, from  
4 Abilene, Texas. I'm a member of the Sierra Club,  
5 the Multi-County Coalition Environment Group, and  
6 Abilenians Against Tenaska. I appreciate the  
7 opportunity to speak with you for the regulation  
8 of coal ash disposal and storage.

9 We know about by-products from coal  
10 combustion such as arsenic, lead, boron, selenium,  
11 mercury, cadmium, thallium, and many other  
12 pollutants at levels that put humans and animals  
13 at risk. Coal ash dumped in unlined or clay-lined  
14 ponds and landfills pose the greatest danger.  
15 When coal ash is deposited in landfills or  
16 impoundment structures, coal ash can be leached  
17 into the groundwater.

18 In West Texas, it can be blown by the  
19 wind throughout the watersheds and end up being  
20 washed into our surface water reservoirs when it  
21 rains. Whereas, underground water is scarce to  
22 nonexistent in West Texas, safe surface water from

1       limited rainfall becomes extremely important to  
2       all life, including humans, animals, birds, and  
3       fish.

4               At least 23 states have poisoned surface  
5       water and groundwater supplies caused by improper  
6       disposal and storage of coal ash. Texas is second  
7       in the nation in coal ash generation. There are  
8       no leachate collection systems in Texas, and there  
9       is no groundwater monitoring. New  
10       Earthjustice/EIP, Environmental Integrity Project,  
11       show additional coal ash contamination in our  
12       state and the entire country.

13              According to the EPA damage case  
14       assessment, proven damage cases in Texas include  
15       Brandy Branch coal ash dump in Harrison County,  
16       Southwestern Electric Power Company coal ash dump  
17       in Titus County, and unpermitted discharges in  
18       Texas Utilities Electric Martin Lake Reservoir in  
19       Rusk County. All three have leaked dangerous  
20       levels of selenium.

21              Coal ash is inexcusably considered  
22       exempt waste under an amendment of the Resource

1 Conservation and Recovery Act, RCRA. This is not  
2 acceptable. Industry is so diverse that it cannot  
3 regulate itself and consequently needs to be  
4 regulated with standards that protect the public  
5 as well as itself.

6 Regulations have been unsuccessful in  
7 Texas and many other states. Regulation needs to  
8 be on a national level to include protective  
9 regulation of all states. The EPA must regulate  
10 coal ash to address the risks from the disposal  
11 and storage of the wastes generated by electric  
12 utilities.

13 The EPA needs to support the RCRA  
14 Subtitle C designation to classify coal as a  
15 hazardous waste. Thank you, gentlemen. Thank you  
16 for your time and effort to carefully consider  
17 today's efforts and comments from concerned  
18 citizens from near and far. I wish you a good  
19 day. I'm Rogers Dennis, and I thank you.

20 MR. BEHAN: We're going to make a quick  
21 switch on the panel. Let the record show that  
22 Elaine Eby is leaving the panel, and Golam Mustafa

1 from EPA's Dallas region, is now on the panel.

2 Can I have Numbers 60, 62, 63, 68, and  
3 132 come forward, please, and 61. Go ahead.

4 SPEAKER: I am Bridget Wood, from  
5 Bartlesville, Oklahoma, and I would like to tell  
6 you a story. Mrs. Reese teaches sixth grade. Her  
7 students have been in school for eight years, pre  
8 K through sixth grade. There are 17 sixth graders  
9 in Mrs. Reese's class, and nine of them have  
10 asthma. You should know about their educational  
11 environment for the past eight years.

12 It is 1,000 miles from Disney World to  
13 Bokoshe, Oklahoma. It is 1,000 miles from Disney  
14 World to Dallas, Texas. It is 1,000 miles from  
15 Disney World to New York City.

16 Imagine a train 1,000 miles long. It  
17 would have 80,000 cars and hold 8 million tons of  
18 coal. AES burned 8 million tons of coal in eight  
19 years. AES generated 3.2 million tons of fly ash.  
20 It filled 80,000 trucks carrying the legal maximum  
21 of 40 tons. Eighty thousand trucks bumper to  
22 bumper would stretch for 1,000 miles. That is how

1 much fly ash has been dumped in the fly ash pit  
2 1.5 miles south of the school in Bokoshe,  
3 Oklahoma.

4 The pit is operated by a company called  
5 Making Money Having Fun. On average, it dumps one  
6 truck every 12 minutes, eight hours a day, five  
7 days a week, 50 weeks a year. One thousand miles  
8 of train cars full of coal, 1,000 miles of trucks  
9 full of fly ash dumped 1.5 miles from the school,  
10 every 12 minutes, for eight years.

11 This is the environment in which Mrs.  
12 Reese teaches the sixth grade. This is the  
13 environment in which her children have learned  
14 since they were in preschool. This is Making  
15 Money Having Fun, and it is criminal.

16 I come before you today to ask that you  
17 adopt Subtitle C for strict regulations of fly  
18 ash. Thank you.

19 MR. BEHAN: 61.

20 SPEAKER: Good afternoon. I'm Joe  
21 Starkey. I am a landowner next to the proposed  
22 Tenaska Trailblazer. Obviously, I'm against it.

1 I have a couple of points I would like to make.

2 First of all, they're talking about  
3 selling fly ash to use in drywall and in roadways.  
4 If anybody's ever done a remodeling project, you  
5 know you get dust and you get it breathed in. The  
6 mercury and arsenic that go in that drywall would  
7 go in people's lungs.

8 Right now at Fort Bragg, North Carolina,  
9 they are investigating the deaths of ten infants  
10 over the last two years because of toxins in the  
11 drywall which they bought from China. They're not  
12 sure exactly which of the toxins that are in that  
13 drywall are causing these deaths. But they are  
14 dying.

15 We should make sure that fly ash in  
16 construction is not the new asbestos. It took us  
17 many years to figure out that asbestos was killing  
18 people. It's taken us many more to get rid of it;  
19 we're still not there. Let's not do that again.

20 The Tenaska permit asks to store their  
21 fly ash in an open pit and keep it down with  
22 sprinkled water. If you look at this rain that we

1       have right now, which is going to cause flooding,  
2       has caused flooding, two days after it ends Texas  
3       will be dry as a bone.

4               They can't keep that fly ash in that  
5       pit. It will go across the country. And this pit  
6       is located in the head of the watershed for many  
7       of the big country cities. We don't need the  
8       arsenic and mercury in our drinking water.

9               I brought up to Mr. Greg Kunkle that  
10       there will be this stuff in the air and it's going  
11       to come down on my property, which will damage us  
12       and be a trespass. His response was, "If you can  
13       prove it, sue us." You need to regulate him so  
14       that he does not damage people for profit.

15              My last point is one that's been made  
16       before here; and that is, profit at the cost of  
17       lives and health should not be allowed. Thank you  
18       for your time. Please regulate these people.

19              MR. BEHAN: Thank you. Number 62.

20              SPEAKER: My name is Whitney Root, and  
21       I'm here representing the Multi-County Coalition,  
22       a nonprofit organization based in Sweetwater,

1 Texas, that is working to stop construction of the  
2 proposed Tenaska Trailblazer Energy Center. Along  
3 with about 700 individuals throughout the Big  
4 Country area, the City of Trent, the City of  
5 Hawley, and the Texas Farmers Union are also  
6 members of our organization. My residence  
7 property extends to within a mile and a half of  
8 the site of the proposed coal plant.

9           We are at a point in history where  
10 debate over coal products should no longer be an  
11 issue. Study upon study confirms that coal ash  
12 contains any number of poisonous materials,  
13 including, but not limited to, mercury, cadmium,  
14 arsenic, cobalt, and lead. Mercury is one of the  
15 deadliest elements on the planet. Arsenic is a  
16 potent poison. Cobalt is a carcinogen.

17           Inasmuch as science provides proof  
18 beyond question, there should be no hesitation for  
19 the Environmental Protection Agency to regulate  
20 this waste for what it is: Hazardous. Any  
21 further debate over the issue simply stalls, once  
22 again, the day of reckoning when the truth be



1       told.

2                   Coal products and by-products are  
3       threatening to human life and therefore, by  
4       definition, hazardous. It is high time for the  
5       Environmental Protection Agency to do what its  
6       title suggests that it do: Protect American  
7       citizenry against hazards such as coal ash.  
8       Failure to do so would only constitute a further  
9       cynical delay of doing what is right and just.

10                  For well over a century, energy  
11       companies have reaped enormous profits because  
12       they've been able to ignore environmental and  
13       human concerns. It is time for the pendulum to  
14       swing back, partway at least, to we, the people,  
15       the inhabitants of this environment. It is the  
16       only environment we have, and it must be  
17       protected. That, my friends, is your job.

18                  Ansel Adams was quoted as saying, "It is  
19       horrifying that we have to fight our own  
20       government to save the environment." Please don't  
21       hesitate to do what you know is right, what is  
22       right for the American people. Coal ash must be

1 regulated under the strictest standards available.  
2 It is a hazardous waste, and it must be treated as  
3 such. Thank you.

4 MR. BEHAN: Thank you. Number 63.

5 SPEAKER: Good afternoon. My name is  
6 Jimmy Lambert, and I am here today as a concerned  
7 citizen.

8 Although not affiliated with any  
9 environmental group, I do strive to support  
10 efforts to be a good steward of the environment.  
11 That being said, I am concerned that the EPA and  
12 environmental axis have taken on the  
13 administrative agenda to kill coal, when coal ash  
14 is recognized as a safe and environmentally  
15 friendly alternative to disposal.

16 It is apparent that the federally owned  
17 corporation TVAs like Kingston served as a  
18 catalyst to promote the environmental agenda.  
19 However, I would question their design,  
20 maintenance, and location, in lieu of an acting  
21 national rule, that destroyed one of the most  
22 valuable recycling efforts in recent history.

1           The EPA will narrow the corrective  
2       action to the extent that it applies, taking the  
3       appropriate precautions and not to the detriment  
4       of the flourishing recycling effort. According to  
5       decades of research and evaluation, the EPA has  
6       stated, by their own admission, that coal  
7       combustion by-products are non-hazardous and safe  
8       to use. Furthermore, toxicity levels of CCPs are  
9       similar to the products they replace in recycling  
10      applications, and fail to justify a change from  
11      existing standards.

12           It is my understanding that the EPA's  
13      proposed designation of CCPs as a special waste  
14      scenario to promote reuse is ambiguous, when, in  
15      fact, the Subtitle C approach, by definition, will  
16      be considered hazardous. Many companies are  
17      fearful of economic losses posed by CCP  
18      alternatives, future liabilities and competitive  
19      disadvantages generated from fear tactics.

20           The aforementioned stigma will kill  
21      beneficial use and set back the environmental  
22      progress made over the last 20 years, resulting in

1 a loss of recycling industry that consumes 50  
2 million tons annually and provides offsets to CO2  
3 on a one-for-one basis.

4 With the depletion of virgin materials,  
5 we need to take full advantage of the benefits  
6 provided by recycling. Even though the EPA boasts  
7 of wanting to support beneficial reuse, their  
8 stealthy approach to the systematic and strategic  
9 demise of the C2P2 program are valid proof that  
10 the EPA is misleading the public. We are seeing  
11 the immediate decay of an otherwise growing  
12 recycling effort.

13 With over 50 percent of the power in the  
14 U.S. Generated from coal, we must maintain  
15 empowerment tactics, which includes economic and  
16 environmental systems. Further limitations on  
17 coal will worsen the economy and cause millions to  
18 lose their jobs, and we'll be faced with enormous  
19 financial burdens.

20 This unnecessary course correction is  
21 without merit and poses to inflict economic  
22 hardship on the industry and families across the

1 nation. Simply put, a Subtitle C ruling would  
2 qualify as a jurisdictional power grab over  
3 states' rights.

4 I ask that the EPA consider realistic  
5 data from industry and issue a ruling in favor  
6 of Subtitle D. Thank you.

7 MR. BEHAN: Number 68.

8 SPEAKER: My name is Julie Prejean, and  
9 I am the chemical environmental supervisor at  
10 Luminant's Oak Grove Power Plant in Robertson  
11 County, Texas. I am also a toxicology major.

12 As a plant employee and local resident,  
13 I have seen firsthand Luminant's commitment to the  
14 safe and responsible handling of coal combustion  
15 residuals.

16 With TCEQ's oversight, Luminant's  
17 coal-fueled power plants, such as Oak Grove, make  
18 it a priority to routinely inspect and maintain  
19 our CCR landfills and surface impoundments. An  
20 annual critical impoundment inspection is  
21 conducted by a registered professional engineer on  
22 surface impoundments that contain CCRs. These

1 reports are kept onsite for a minimum of three  
2 years as a part of the company's impoundment  
3 inspection program. All of our managed ash  
4 disposal areas are also inspected by the TCEQ  
5 periodically to ensure compliance with all  
6 applicable state and federal regulations.

7 TCEQ has a comprehensive regulatory  
8 program to safely regulate CCR disposal practices.  
9 Environmental risk is dependent in part upon  
10 site-specific factors such as depth to  
11 groundwater, annual rainfall, and the amount of  
12 clay present in the soil. Imposing a hazardous  
13 waste designation would result in an attempt to  
14 regulate using a one-size-fits-all approach, which  
15 is not appropriate or warranted.

16 It would also simultaneously destroy the  
17 recycling market. Since 1993, Luminant has sold  
18 nearly 40 billion pounds of CCRs. In 2009 alone,  
19 we recycled more than 2.2 billion pounds. In  
20 fact, a variety of road projects currently  
21 underway right here in North Texas are utilizing  
22 recycled coal ash from Luminant facilities.

1                   Finally, regulations of CCRs as a  
2                   hazardous waste would also increase compliance  
3                   costs to the point that they could render certain  
4                   fuels, such as Texas lignite, uneconomic. EPRI  
5                   estimates that each regulation would be so  
6                   uneconomical that it could result in a closure of  
7                   coal-fueled power plants that are needed to  
8                   produce affordable and reliable electricity to a  
9                   state that has an increasing demand for  
10                  electricity as witnessed this summer with new  
11                  record consumptions.

12                 In summary, Luminant strongly opposes  
13                  the regulation of CCRs as a hazardous material  
14                  under the RCRA Subtitle C hazardous waste program  
15                  and recommends that EPA continue to allow states  
16                  to run their own programs. Thank you for the  
17                  opportunity to comment.

18                 MR. BEHAN: Thank you.

19                 SPEAKER: My name is Bill Hale. I'm a  
20                  rancher and county commissioner in Rusk County,  
21                  Texas. Good afternoon, and thank you for allowing  
22                  me to testify today.

1                   On four different occasions during both  
2           the Republican and Democrat administrations, the  
3           EPA determined that the regulation of coal  
4           combustion residuals, CCRs, as hazardous  
5           substances was not warranted and that regulation  
6           as non-hazardous waste by the state is the  
7           appropriate option for ensuring the safe  
8           management of these materials, while preserving  
9           recycling.

10                   Texas Commission on Environmental  
11           Quality's comprehensive CCR handling and disposal  
12           regulations have proven effective. As a result,  
13           there have been no catastrophic failures at any  
14           facilities in our state.

15                   Power generation companies actively  
16           pursue opportunities to recycle CCRs, thereby  
17           decreasing energy costs, reducing emissions,  
18           saving landfill space, and using less natural  
19           resources. These residuals are used by the  
20           roofing, concrete, and carpet industries, as well  
21           as in oilfield projects and road paving.  
22           Minneapolis, Minnesota's I-35 bridge collapsed in



1       2007 and was rebuilt using high-performance  
2       concrete containing silica fume and fly ash.

3               It is a certainty that a hazardous waste  
4       designation for CCRs would sharply increase  
5       production costs and therefore raise electricity  
6       prices for consumers. Facility and/or mine  
7       closures would cost Texas jobs and tax revenue at  
8       a time when both are in short supply.

9               States are in the best position to  
10       regulate CCR disposal practices since the safe and  
11       responsible management of CCRs depends heavily on  
12       local climate, geology, and other site-specific  
13       factors. A one-size-fits-all federal approach is  
14       not the right answer.

15              Job creation and the protection of  
16       current jobs are vital to economic viability in  
17       Texas and across America. I don't think anyone  
18       will argue the point that we are in hard economic  
19       times in our country. Many men and women have  
20       lost their jobs and in some cases their homes.  
21       Many others are hanging by a thread to keep their  
22       homes and pay their bills. With this in mind, why

1       would we consider any unnecessary regulations that  
2       could and would increase the electricity costs to  
3       our most vulnerable citizens?

4               One of the most respected presidents  
5       that served our great nation was Ronald Reagan.  
6       He once said -- and I paraphrase -- government  
7       cannot legislate a prosperous and growing economy.  
8       It does, however, have a choice whether to aid or  
9       burden that economy. High taxes and unnecessary  
10      government regulations are the burdens that  
11      destroy a healthy economy and keep a slow economy  
12      from recovering.

13             Thank you very much for your attention.

14             MR. BEHAN: Thank you. Sixty-four, 65,  
15      66, and 67. Sixty-four.

16             SPEAKER: Good afternoon. Thank you for  
17      the opportunity to bring information to you  
18      concerning this.

19             Basically, we've heard a lot about the  
20      fact that the industry does a lot to recycle.  
21      We've learned that they've got a lot of ways that  
22      they want to do that. They feel like that the

1 best way to control this is at the city, the  
2 county, and the state level. As a matter of fact,  
3 back in 1999, the Western Regional Ash Group  
4 testified before the EPA to that exact fact.

5 If we look at the Tenaska plant that's  
6 proposed for Nolan County, Texas, that's being  
7 built in a county that has just over 14,000 people  
8 for the population. The largest city within a  
9 25-mile radius of this proposed plant is the city  
10 of Sweetwater. It comes in at just over 11,000  
11 people.

12 Once you take that 11,000 people from  
13 the city of Sweetwater out of the county numbers,  
14 you're basically looking at a little over 1,000  
15 people. And we're expecting county commissioners,  
16 because the city is not going to be regulating it  
17 -- the plant's not being built in the city -- and  
18 we're going to expect county commissioners, who  
19 are ill-equipped and undereducated, to deal with a  
20 \$3.5-plus billion industry's waste, trash.  
21 They're not able to do that.

22 That bumps us up to the next level,

1       which is the state. We've heard numerous people  
2       testify here today that TCEQ does a wonderful job.  
3       There was actually a bill introduced in the  
4       legislature last session, House Bill Number 1450.  
5       This bill was up before the Environmental  
6       Regulation Committee.

7               One of the aspects of this regulation,  
8       or this bill, was to require the coal plants, when  
9       they do do the test for metals and determine that  
10      the water has been contaminated, that they simply  
11      let the residents around the plant know, hey, your  
12      water may be contaminated, because we found  
13      contamination in the water. This bill was heavily  
14      opposed by the coal industry. It ended up dying  
15      in committee.

16             TCEQ doesn't regulate the coal trash,  
17      the coal waste. It's time for the EPA to step up  
18      and deal with the coal waste as the hazardous  
19      waste that it is, and to actually do that under  
20      the Subtitle C. As Ryan Rittenhouse said earlier,  
21      that's a minimum. As an Environmental Protection  
22      Agency, we should be doing much more.

1                   MR. BEHAN: Sir, could you state your  
2                   name.

3                   SPEAKER: My name is Jimmy Headstream,  
4                   Sweetwater, Texas, member of the Multi-County  
5                   Coalition.

6                   MR. BEHAN: Thank you, sir.

7                   SPEAKER: Good afternoon. My name is  
8                   Jerry Smith, and I've been in the business of  
9                   recycling coal ash for the last 12 years.

10                  During that time, I have repeatedly  
11                  bragged to my family and friends about being part  
12                  of the greatest recycling success story in the  
13                  history of this country. I consider myself an  
14                  environmentalist, and I believe that beneficial  
15                  reuse of resources is critical to the history of  
16                  this planet.

17                  I have witnessed the growth of the coal  
18                  ash reuse industry. It has grown from most people  
19                  seeing coal ash as an unwanted, costly waste  
20                  product to becoming a very valuable resource with  
21                  many uses, including use in concrete, concrete  
22                  products, masonry products, soil stabilization

1 agents, wallboard, and the list goes on and on.

2 Today, our industry, our success story,  
3 is in jeopardy, not because the EPA doesn't  
4 support beneficial use, because I believe you do,  
5 as you have shown in the past by sponsoring the  
6 C2P2 program, but because there is a very real  
7 risk of assigning a stigma to these products that  
8 would be extremely detrimental to our efforts.

9 There are many anticipated and  
10 unanticipated legal liabilities that await all of  
11 us if coal ash is stigmatized with a RCRA Subtitle  
12 C hazardous designation. As you know, and due in  
13 part to the EPA's encouragement and support, coal  
14 ash usage is very widespread, and thousands of  
15 people handle it every day. Can you imagine the  
16 lawsuits that will result from coal ash being  
17 handled two different ways? One by highly trained  
18 workers treating coal ash as hazardous as it's  
19 disposed of and one by those treating it as a  
20 non-hazardous product.

21 A handful of highly publicized lawsuits  
22 -- and they will be highly publicized -- will end

1 coal ash usage as we know it today. For many  
2 utilities, end users, DOTs, small businesses and  
3 big businesses, it will not be worth the risk.  
4 You can do everything possible to encourage reuse  
5 of coal ash, but you cannot protect these entities  
6 from lawsuits.

7 Everyone at this meeting will agree that  
8 disposal practices of coal ash can and should be  
9 improved. So I ask you today to rule in favor of  
10 the Subtitle D solid waste option and not the  
11 Subtitle C hazardous designation. The disposal  
12 options that you have proposed provide essentially  
13 the same level of protection for the environment.  
14 We have to avoid the stigma associated with the  
15 Subtitle C designation.

16 Prior to getting involved in this  
17 industry 12 years ago, I was in the hazardous  
18 waste remediation disposal industry. I agree with  
19 the EPA's previous determination that there is  
20 nothing about coal ash that warrants a RCRA  
21 Subtitle C hazardous designation. Thank you for  
22 your time.

1                   MR. BEHAN: Thank you.

2                   SPEAKER: My name is Barbara Lawrence,  
3                   and I live in Freestone County, Texas. I  
4                   represent the citizens group COPPS For Clean Air,  
5                   Freestone County chapter.

6                   My husband and I moved to Freestone  
7                   County when we retired, for the peace and quiet of  
8                   the country, the clean air, and the outdoor  
9                   lifestyle. What a surprise greeted us. Freestone  
10                  County is home to a very old and very dirty  
11                  coal-fired power plant: Big Brown. And just  
12                  across the county line is another of the dirtiest  
13                  in the country: Energy Limestone.

14                 There is a local legend that when you  
15                 get cancer and go to Houston, to MD Anderson  
16                 Cancer Center, they say to you, "Oh, you're from  
17                 Freestone County; you must live near that coal  
18                 plant." I can't say that it's true, but then  
19                 again, I heard say a lot.

20                 We also have a high incidence of autism,  
21                 thought to be related to mercury. I don't know  
22                 the statistics, but I do know that in a county



1       with a population of under 20,000, the incidence  
2       is high enough that they are raising money to  
3       build their own school for autistic children. For  
4       me, that fact seems astonishing.

5               Since we moved to Freestone County, my  
6       husband sleeps with an oxygen tank and has a home  
7       breathing machine. Remember that outdoor  
8       lifestyle I mentioned? Well, he can't spend too  
9       much time outside because the air quality is  
10      frequently very unfriendly. Many of my neighbors  
11      are retirees, and many experience health problems  
12      similar to my husband's.

13             I understand the concern of many I've  
14      heard here today in support of Big Brown. It's  
15      their livelihood. But our health is more  
16      important, and Big Brown isn't going out of  
17      business, so let's weigh our options here: Death  
18      and disease, more corporate profits. To me, it's  
19      just not a contest.

20             I just learned about coal ash and the  
21      possible contamination of our groundwater. Big  
22      Brown has been burying coal ash in the ground

1       without strict regulation and they've been doing  
2       it for nearly 40 years.

3               The lake on which I live, which is only  
4       a few miles from Big Brown, is the third largest  
5       in the state of Texas and is a reservoir for  
6       Tarrant County. That's potentially a lot of  
7       contaminated water affecting a lot of people.

8               Given the high incidence of cancer and  
9       autism in Freestone County, the poor air quality,  
10      and the fact that we have multiple recreational  
11      lakes that risk contamination, I implore the EPA  
12      to strictly regulate coal ash disposal. Thank  
13      you.

14              MR. BEHAN: Thank you.

15              SPEAKER: Good afternoon. My name is  
16      Barry Boswell. I'm a director of generation at  
17      Luminant.

18              Luminant has more than 18,300 megawatts  
19      of generation in Texas, including 8,000 megawatts  
20      fueled by coal. We operate five baseload  
21      coal-fueled power plants which help to meet the  
22      ongoing power needs of the power market on an

1 almost continuous basis. Our plants are fueled by  
2 Texas lignite that we mine. At some facilities we  
3 also use western coal.

4 Today, I speak for thousands of Luminant  
5 employees across Texas to say that we genuinely  
6 care about our communities' and employees' safety  
7 and our legacy of environmental stewardship. We  
8 take personal responsibility for running our  
9 plants and processes in the absolute best way  
10 possible. We are committed to complying with all  
11 relevant rules, regulations, and laws governing  
12 our generating plants.

13 Finally, we hold the highest standards  
14 to not only protect the environment, but also the  
15 public's health. We live in these communities, as  
16 do our families, our neighbors, and our friends.

17 We have been committed partners to our  
18 surrounding communities and counties for decades.  
19 We are an important part of the local communities,  
20 with jobs and local spending. In 2009 alone, our  
21 lignite plants and mines paid nearly \$64 million  
22 in tax contributions to surrounding counties and

1 school districts, which have been used to  
2 construct modern public facilities and provide  
3 needed services.

4 As one of the largest power generators  
5 in the state, we are acutely aware of our  
6 environmental responsibilities. My company has  
7 spent hundreds of millions of dollars voluntarily  
8 on new environmental controls across our fleet.

9 When it comes to coal combustion  
10 by-products, we are just as committed to doing the  
11 right thing for the state. We are in full  
12 compliance with the Texas Commission on  
13 Environmental Quality's comprehensive coal  
14 combustion residual handling and disposal  
15 regulations. We make it a priority to inspect and  
16 maintain our CCR landfills at all facilities  
17 through routine observations and detailed surface  
18 impoundment inspections. All of this is a  
19 responsibility we take very seriously.

20 Unnecessary additional regulations of  
21 coal ash as a hazardous waste would have a  
22 significant impact on countless businesses and

1 employees who depend on these products for their  
2 commerce and livelihood.

3 The coal combustion by-products from our  
4 plants have been an integral part of construction  
5 for many roads across Texas, many of which are  
6 located right here in the Dallas area. This  
7 includes the Dallas High Five Interchange, Dallas  
8 North Tollway, the George Bush Tollway, and State  
9 Highway 121.

10 In summary, Luminant strongly opposes  
11 the regulation of CCRs as a hazardous material  
12 under the RCRA Subtitle C hazardous waste program  
13 and recommends that EPA continue to allow states  
14 to run their own programs. Thank you for the  
15 opportunity to comment.

16 MR. BEHAN: Thank you. Numbers 69, 70,  
17 71, and 72.

18 SPEAKER: I'm Charles Morgan, registered  
19 professional engineer in Texas. I represent  
20 Citizens For Environmental Clean-Up in Fairfield,  
21 Texas.

22 Freestone County is the home of Big

1       Brown I and II, the 23rd dirtiest, most polluting  
2       power plant in the United States, the most  
3       polluting power plant in Texas. They generate  
4       about 86,000 tons per year of sulphur dioxide  
5       alone, not to mention all the nitrogen oxides, but  
6       they also generate about 300,000 tons per year of  
7       coal ash waste.

8               Citizens For Environmental Clean-Up  
9       request that Subtitle C be the preferred method of  
10      control of the coal ash combustion residuals due  
11      to the hazardous elements found to exist in the  
12      CCRs, such as mercury, selenium, thallium,  
13      arsenic, and others. These wastes must be  
14      periodically tested to determine concentration of  
15      toxic elements, and not just a one-time test.

16             Reuse of CCR waste must be such that  
17      these wastes are totally encapsulated. If that's  
18      used in concrete, fine. But use on roadways, even  
19      onsite, must not be allowed because there is so  
20      much coal traffic carrying the coal from the site,  
21      the mining site, to the plant that these wastes  
22      become airborne and they contaminate areas all

1       around the mining area, plus the water streams,  
2       like Fairfield Lake and the Trinity River. These  
3       CCRs must not be allowed to be buried under or  
4       with the reclamation materials during the land  
5       reclamation processes after the coal removal, and  
6       then all of the outfalls in coal ash ponds must  
7       have elements specified for testing in that  
8       outfall effluent.

9               We must protect our environment from  
10       contamination and hazardous waste contained in the  
11       CCRs. The EPA table showing cost and benefit  
12       ratios shows a higher cost for the Subtitle C  
13       method of control, but the table also shows a  
14       greater benefit, many times greater benefit than  
15       the cost, and a much greater benefit than the  
16       Subtitle D proposal.

17              Therefore, the CEC request Subtitle C be  
18       used as the method of CCR control. Our people are  
19       our greatest asset. Our families must be  
20       protected. Thank you.

21              MR. BEHAN: Thank you.

22              SPEAKER: Good afternoon. Thank you for

1 the opportunity to provide my input regarding the  
2 proposed CCR disposal rules. My name is Eric  
3 Pastor. I'm a licensed professional engineer in  
4 11 states including Texas. I've been an  
5 independent consulting environmental engineer in  
6 private practice for 26 years.

7 I've never previously provided formal  
8 comment on an EPA regulation, but after reviewing  
9 the proposed CCR rules and, more importantly,  
10 reading comments that characterize state  
11 regulatory agencies as not adequately monitoring  
12 CCR disposal sites and having refused to do their  
13 jobs, I felt compelled to set the record straight  
14 for Texas, based on my firsthand experience.

15 In my opinion, the rules and guidance of  
16 the Texas CCR management program as administered  
17 by the TCEQ are sound, and the TCEQ program staff  
18 are dedicated and competent. To support this  
19 conclusion, let me first start with a brief review  
20 of the process that must be followed before a CCR  
21 disposal facility can be used.

22 Under Rule 335.6 of Title 30 of the TAC,



1 a person that intends to store, process, or  
2 dispose of industrial solid waste such as CCR must  
3 provide 90 days' prior notice to the TCEQ.  
4 Elements of this notification, which we often  
5 refer to as a registration package, include  
6 information regarding waste composition, waste  
7 management methods, facility engineering plans and  
8 specifications, and the hydrogeologic setting of  
9 the proposed disposal facility.

10 The registration packages that we  
11 produce in my firm usually include the groundwater  
12 monitoring plan, closure plan, and a post-closure  
13 inspection and maintenance plan. Once submitted,  
14 registration packages are reviewed by TCEQ Waste  
15 Permits Division. I have found these reviews to  
16 be thorough, detailed, and comprehensive.

17 Comments that we have received on  
18 registration packages have ranged from request for  
19 justification and monitoring well locations and  
20 statistical groundwater data valuation procedures  
21 to details on waste-handling methods.

22 These regulations are supported by a

1 series of technical guidance documents that cover  
2 topics ranging from site selection to landfill  
3 design, construction and groundwater monitoring.  
4 These documents, which were first developed in the  
5 1970s, are regularly reviewed and updated by TCEQ  
6 staff to ensure they are current.

7 Potential releases from CCR disposal  
8 facilities do not go unchecked but are managed  
9 underneath a well-established Texas risk reduction  
10 program which has a nearly 15-year track record of  
11 success in directing the investigation and  
12 remediation of environmental releases, and is  
13 supported by more than two dozen guidance  
14 documents.

15 Last, I would like to note that in my  
16 frequent interactions with the engineers and  
17 scientists of the TCEQ programs, although I have  
18 not always been in complete agreement on all  
19 technical issues, I have found them to be solid  
20 professionals who take their mission of protecting  
21 health and the environment very seriously. Thank  
22 you for the opportunity to provide these comments.

1                   MR. BEHAN: Thank you.

2                   SPEAKER: Good afternoon. My name is  
3 Frank Johnson. I've been in the concrete  
4 aggregate business for 47 years. I'm vice  
5 president of Hallett Materials, the Texas  
6 division, and the chairman of the Texas Aggregates  
7 and Concrete Association. TACA has been in Texas  
8 for 50 years and it is a statewide organization  
9 that represents over 350 producer companies. In  
10 Texas alone, the cement industry and related  
11 construction industry contribute more than 75,000  
12 jobs to the state economy.

13                   Our members use and rely on coal ash  
14 products, particularly fly ash, in production of  
15 materials. With the help of the EPA and a Coal  
16 Combustion Products Partnership, or C2P2, our  
17 members have expanded our use of coal ash in  
18 various products.

19                   EPA's rule and proposal highlights  
20 increase the beneficial use of coal ash, not  
21 including mine filling, from 23 percent in 1995 to  
22 37 percent in 2008. Environmental benefit to this

1       increase is great. Ash should not be thrown away.  
2       Instead, it should be recycled, being used in  
3       proven safe products that we (inaudible). Based  
4       on EPA's old numbers, 13.7 million tons of coal  
5       ash were recycled and used in place of portland  
6       cement in 2007. This energy savings is equal to  
7       the energy used in 676,000 homes. It also reduced  
8       greenhouse gas missions equal to taking 2.3  
9       million cars off the road.

10               Recycling coal ash is something TACA  
11       members are proud of, but we're afraid that all  
12       the beneficial reuse will come to an end if EPA  
13       finalizes Subtitle C regulatory option. Calling  
14       coal ash a special waste does not eliminate  
15       liability, the stigma. In the marketplace there  
16       are other market concerns.

17               The EPA discussing the hazardous waste  
18       regulations and holding these hearings makes it  
19       hard to recycle coal ash and use it in  
20       construction material products. The stigma is  
21       real. Coal-fired power plants have already said  
22       they will be very unlikely to buy coal ash from

1       our members out of fear of liability. Even if our  
2       members can obtain coal ash, they will be inclined  
3       to look for other products.

4               We do not want to deal with the  
5       potential liability of operational requirements  
6       for handling coal ash classified as a hazardous  
7       waste when not beneficially used. Also, buyers of  
8       our products that contain coal ash will look for  
9       other options because consumers do not want to buy  
10      materials stigmatized as hazardous waste.

11             Our members provide a valuable resource  
12      found in countless products which will literally  
13      serve as the foundation to allow our economy to  
14      recover. A hazardous waste regulation and  
15      accompanying stigma will destroy the beneficial  
16      sector of our industry. This will increase costs  
17      while we are all struggling in the economy and  
18      also several member companies already operating a  
19      small (inaudible).

20             To protect the beneficial use, protect  
21      our environment, and protect our members, on  
22      behalf of the Texas Aggregates and Concrete

1       Association, I ask that you not regulate coal ash  
2       as a hazardous waste, but if you determine that  
3       more regulation is even necessary, instead  
4       regulate it as a non-hazardous waste. Thank you.

5               MR. BEHAN: Thank you. Number 72.

6               SPEAKER: I appreciate this opportunity  
7       to address the critical issue of coal fly ash. My  
8       name is Susan Schmidt. I'm a concerned citizen  
9       from Oklahoma City. I have been studying coal  
10      pollution issues for the last year and a half.

11              About 70 percent of the planet is  
12      covered in oceans. Ninety-eight percent of all  
13      the water on the earth is in those oceans and  
14      therefore undrinkable due to salt. That leaves  
15      about 2 percent freshwater. Most of that, 1.6  
16      percent, is locked up in the polar ice caps and  
17      glaciers, which will be added to the oceans when  
18      they melt. There is some water in the air. So  
19      that leaves less than half of 1 percent left in  
20      the groundwater aquifers, wells, and in our lakes  
21      and rivers.

22              That one-half of a percent is, quote,

1        freshwater. But freshwater does not mean it's  
2        safe to drink or available where it is needed.

3                In August, I RV camped in New Mexico's  
4        Carson National Forest. The water pump in camp  
5        was not working. The local ski resort began  
6        charging 25 cents a gallon for water out of their  
7        garden hose. In less than a week, they went up to  
8        a dollar a gallon. It wasn't due to a lack of  
9        water. Like today, the unusual summer rains were  
10       overflowing the creeks. There was plenty of water  
11       but not enough that was safe to drink.

12               Mark Twain is attributed with the quote,  
13       "Whiskey is for drinking; water is for fighting  
14       over."

15               I bring up this recent and personal  
16       experience because coal ash threatens the quality  
17       of the tiny percent of freshwater that is  
18       available to all life forms from amphibians and  
19       fish, up the food chain to us.

20               This past July, the Oklahoma Department  
21       of Environmental Quality issued a warning.  
22       Sixteen lakes in the state of Oklahoma contain

1 species of fish with mercury levels that are  
2 unsafe for unlimited consumption. Two of the  
3 lakes have fish that are unsafe to eat at any  
4 levels by anybody.

5 In researching the symptoms of mercury  
6 poisoning, I found an EPA quote that puts any  
7 human-caused mercury poisoning into perspective.  
8 Quote, "A little mercury is all that humans need  
9 to do away with themselves, quietly, slowly, and  
10 surely," unquote.

11 As you know, a large part of mercury  
12 pollution comes from coal-fired power plants. The  
13 mercury and other harmful by-products that go up  
14 the smokestack end up in the fly ash, and the fly  
15 ash is trucked and dumped not far from where it's  
16 burned.

17 I took a map of the 16 lakes with  
18 mercury contamination and overlapped a map of  
19 coal-fired power plants which, by association,  
20 includes fly ash disposal sites. They cover the  
21 same three-fourths of the state of Oklahoma. Only  
22 the northwest corner of Oklahoma did not have any



1 lakes included in the mercury warnings, and only  
2 the northwest corner of Oklahoma does not have any  
3 coal-fired power plants.

4 The citizens of Bokoshe, Oklahoma, have  
5 testified to the hazards of fly ash in their  
6 community. Sadly, their story is not unique. It  
7 is obvious to me the EPA must protect our nation's  
8 precious drinking water supply from fly ash  
9 contamination with Subtitle C. Thank you.

10 MR. BEHAN: We're going to have a panel  
11 change right now. Let the record reflect that  
12 Craig Dufficy, U.S. EPA, is returning to the panel  
13 to replace Jim Kohler.

14 Numbers 73, 74, 76, 77. Is there anyone  
15 in the room who has not spoken who has a number  
16 less than 75? 222.

17 SPEAKER: Good afternoon. My name is  
18 Mark Bowles, and I appreciate the opportunity to  
19 speak before you today. I am the environmental  
20 support manager for Entergy Services, and I'm  
21 speaking today on behalf of Entergy Corporation.

22 Let me begin by first stating that

1       Entergy is supportive of federal regulations for  
2       CCRs under RCRA Subtitle D non-hazardous waste  
3       rules, though, as I'll discuss, any Subtitle D  
4       program must recognize and allow the proper role  
5       of the states in administering these rules.

6               Entergy Corporation is an integrated  
7       energy company engaged primarily in electric power  
8       production and retail distribution operations.  
9       Entergy, along with its utility group members and  
10      various trade associations, has worked closely  
11      with the EPA and both the Arkansas and Louisiana  
12      Departments of Environmental Quality to ensure  
13      that the management of CCRs is done in such a way  
14      that it protects the environment, complies with  
15      regulations, and ensures the continued beneficial  
16      reuse of CCRs.

17             Entergy's three coal plants located in  
18      Arkansas and Louisiana have historically reused  
19      over 75 percent of their CCRs on an annual basis.  
20      We strongly believe that any regulation that adds  
21      a hazardous waste designation for this material,  
22      such as the Subtitle C option in the current

1     proposal, would be counterproductive and present a  
2     sigma on CCR beneficial reuse, thereby seriously  
3     undermining future recycling efforts.

4             The three coal plants that Entergy  
5     operates are permitted by the Arkansas and  
6     Louisiana Departments of Environmental Quality.  
7     Both state programs require that landfills be  
8     constructed with compacted clay or geosynthetic  
9     liners, meet stringent design criteria, conform to  
10    standardized operational requirements, conduct  
11    groundwater monitoring, and comply with closure  
12    and post-closure criteria as well as provide  
13    financial assurance. Arkansas and Louisiana are  
14    two states that have demonstrated that states can  
15    manage CCR disposal and should be the  
16    administrators of any Subtitle D option.

17            Entergy has evaluated the alternatives  
18    contained in EPA's proposed rule and believes that  
19    the Subtitle D Prime option is the best solution.  
20    Unlike the Subtitle C approach, D Prime will  
21    establish a robust and environmentally protective  
22    program for coal ash storage and disposal units

1       without crippling coal ash beneficial use and  
2       imposing unnecessary regulatory costs on power  
3       plants, threatening jobs and increasing  
4       electricity costs. The Subtitle D Prime option  
5       recognizes that existing CCR impoundments with  
6       sound performance should be allowed to continue to  
7       operate.

8               However, Entergy feels that the Subtitle  
9       D Prime option, as written, requires improvements,  
10       including allowing for administration of the  
11       federal Subtitle D rules for CCRs by state  
12       regulatory programs, to avoid duplication of  
13       federal and state efforts. This would also allow  
14       states to enforce compliance through a traditional  
15       permitting framework.

16              Entergy also believes that this option  
17       does not limit EPA's enforcement authority since  
18       4010(c) of RCRA and similar provisions clearly  
19       allow the EPA to oversee state rules regulating  
20       solid waste. EPA already does this with municipal  
21       solid waste landfills and non-municipal solid  
22       waste landfills that may receive conditionally

1 exempt small quantity generator hazardous waste.

2 For these reasons, we ask the EPA to  
3 select the Subtitle D Prime option in its final  
4 rule. Thank you.

5 MR. BEHAN: Thank you.

6 SPEAKER: Good afternoon, and thank you  
7 for this time today. My name is Gloria Tedrick,  
8 and I'm a citizen of the state of Oklahoma and  
9 Washington County.

10 Being born at the end of World War II, I  
11 have lived through the Cold War, bomb shelters,  
12 the Bay of Pigs, Vietnam, Desert Storm, and our  
13 war with Iraq. I worried about Kruschev, but I  
14 never worried about breathing the air and the  
15 water I drank, until living close to a coal-fueled  
16 power plant.

17 Exposure to air and water pollution and  
18 poisons can have permanent health effects with a  
19 range of diseases from asthma to cancer. We know  
20 that fly ash contains substantial amounts of lead,  
21 mercury, arsenic, and other carcinogens.

22 We must have both existing landfills and

1 existing surface impoundments to be listed as  
2 special waste subject to the regulation under  
3 Subtitle C. We need Subtitle C because our  
4 state's regulators refuse to enforce the law while  
5 companies like AES and Making Money Having Fun  
6 create another disaster like Picher, Oklahoma, or  
7 Kingston, Tennessee.

8 The EPA's actions must ultimately be  
9 protective of human health and the environment. A  
10 failure to regulate this toxic material would be a  
11 failure to each citizen who breathes the air and  
12 utilizes the water.

13 I strongly request the EPA to determine  
14 that the disposal of coal combustion waste  
15 warrants regulation under Subtitle C as a  
16 hazardous waste. Thank you very much.

17 MR. BEHAN: Thank you.

18 SPEAKER: Good afternoon. Thank you for  
19 letting me speak. My name is John Tedrick. I'm  
20 from Washington County, Oklahoma. I'm a  
21 mechanical engineer by profession. I am troubled  
22 by the manner in which fly ash is handled and

1 regulated in Oklahoma. I strongly request the EPA  
2 to regulate coal ash, and I'm here to add my voice  
3 to the support of the Subtitle C option.

4 Nationwide, states lack the incentive to  
5 regulate coal combustion waste. They are failing  
6 to take the responsibility of regulating fly ash  
7 in a safe manner. There is a great social  
8 injustice done to the communities in rural  
9 Oklahoma. They have become the dumping grounds  
10 for industrial waste products.

11 With your help, we can have federally  
12 enforced safeguards for the management of coal  
13 ash. There is no way to guarantee the American  
14 people that a disaster like Kingston, Tennessee,  
15 will never happen again. But if coal combustion  
16 wastes are listed as special waste under Subtitle  
17 C of the Resource Conservation and Recovery Act,  
18 we'll be much better protected.

19 Because of all the toxic chemicals in  
20 coal ash such as mercury, lead, and arsenic, it is  
21 completely unreasonable to treat coal ash the same  
22 way as household garbage. Coal ash is hazardous,

1       and it should be regulated that way.

2               Please select the Subtitle C option and  
3       regulate coal ash as a special hazardous waste.  
4       Thank you.

5               MR. BEHAN: Thank you.

6               SPEAKER: Okay. Thank you. My name is  
7       Hal Suter. That's for the benefit of your court  
8       reporters. S-U-T-E-R. That -- that last name is  
9       spelled a variety of different ways. I am the  
10      chair of the Lone Star Chapter of the Sierra Club.  
11      I know a number of people from the organization  
12      have come up here and spoke on the issue, and you  
13      probably have some people who come here before.  
14      About all I can basically say is that ditto to  
15      what they've said. We want -- we support the  
16      regulation under Subtitle C.

17              I've heard a variety of people talking  
18      about, let's have the states regulate this on  
19      their own. And I guess in theory, that sounds  
20      like a pretty good idea; to have the government,  
21      you know, closer to the people and that they will  
22      be able to do a better job. Unfortunately, when



1       you get out there in the real world and  
2       particularly in issues such as this, you're going  
3       to need to have someone oversee -- not necessarily  
4       regulate, but oversee -- who is less susceptible  
5       to political pressure. And I think that you will  
6       find that at the state level, you are going to  
7       find much more political pressure than you will at  
8       the federal level.

9               I was kind of ashamed in a way listening  
10       to some of my brothers and sisters from Oklahoma  
11       and Louisiana and Arkansas, talking about the  
12       division of all theses various agencies and all  
13       the problems they have. And I was sitting there  
14       -- well, hallelujah, Texas is not alone. We have  
15       here with the Texas Com -- quote, Texas Commission  
16       on Environmental Quality, unquote, that supposedly  
17       regulates a variety of things (unintelligible.)  
18       You could fill this room, every ballroom in  
19       downtown Dallas, with people who have had  
20       experiences with the, quote, TCEQ, unquote, and  
21       are still bleeding.

22               I think with -- the name should be

1       changed, instead of TCEQ, to T-I-P-A, TIPA, Texas  
2       Industrial Permitting Agency. They do very --  
3       they do very little in the way of looking for the  
4       individual common citizen first. Whether it's  
5       about a statutory, things that's kind of the  
6       legislature, whether it's by the agen -- by the  
7       pressures of the industry itself, they do not do  
8       the job that they should.

9               While in theory I would like it to stay  
10      closer to the people and the -- and leave it up to  
11      the individual states, in reality, if we're going  
12      to do something about this problem, it's going to  
13      have to be done by your agency, the EPA. So I'll  
14      just reiterate the support for -- put it under  
15      Subtitle C. Thank you very much.

16             MR. BEHAN: Thank you. Number 78,  
17      Number 81. Are 79 and 80 here? 109, 121, 225,  
18      226. Go ahead, sir.

19             SPEAKER: Good afternoon. My name is  
20      Mike Altavilla. And my present position is the  
21      environmental compliance superintendent for Texas  
22      Westmoreland Coal Company. And I'm here today as

1 chairman of the Texas Mining and Reclamation  
2 Association, TMRA's Lignite Committee. TMRA  
3 appreciates the opportunity to present its  
4 comments here today.

5 TMRA is a Texas nonprofit trade  
6 organization comprised of approximately 100 mining  
7 electric utility and supplier members. We support  
8 coordinated, rational, and consistent federal,  
9 state, and local policies to assure the economic  
10 recovery and use of this state's mineable  
11 resources in an environmentally sound and  
12 responsible manner. TMRA's members play a vital  
13 role in the Texas economy.

14 The -- the Texas lignite mining industry  
15 alone spends in excess of \$100 million each year  
16 on land reclamation and protection of water, air,  
17 and other environmental resources. Texas contains  
18 the largest electric market in the country,  
19 generating 80 percent more electricity than any  
20 other state. Baseload coal generation accounts  
21 for about 38 percent of this amount. And 37  
22 million tons of Texas lignite was mined in 2009.

1 Coal production and use in Texas creates over  
2 33,000 jobs.

3 Recycling and the beneficial use of coal  
4 ash is something TMRA members strongly support.  
5 Whether beneficially used in coal mining  
6 reclamation or recycled and used in a number of  
7 construction materials, these uses should be  
8 encouraged. Beneficial use reduces greenhouse  
9 gases, emissions, and also reduces disposal needs.  
10 Our members are concerned that the beneficial use  
11 of CCRs will halt or severely be restricted if EPA  
12 finalizes the Subtitle C regulatory option.

13 TMRA supports EPA's exclusion of mine  
14 filling from the rule proposals, specifically as  
15 it relates to the placement or use of CCRs and  
16 Texas surface mine reclamation. Consider the  
17 following: There is no evidence suggesting any  
18 negative effects from using CCRs in mine  
19 reclamation and this land is highly valued and in  
20 demand when it is released. A hazardous  
21 designation would also raise the cost of  
22 reclamation, increase energy use in emissions, and

1       could delay timely reclamation. The Texas program  
2       through the environmental and surface mining  
3       regulators in Texas is protecting human health and  
4       the environment, and there is no need for  
5       additional federal regulation.

6               Moreover, EPA's proposal for the  
7       regulation of CCR's as a hazardous material under  
8       Subtitle C, which strips states of the ability to  
9       cost effectively regulate CCR disposal practices  
10      and would impede the beneficial reuse of CCRs. In  
11      summary, TMRA opposes any regulation of CCRs as a  
12      hazardous material under the RCRA Subtitle C  
13      hazardous waste program. Texas already has  
14      in place a program protective of the public and the  
15      environment. A new one-size-fits-all federal  
16      program for Texas is not needed. Thank you for  
17      this opportunity to provide comment.

18             MR. BEHAN: Thank you.

19             SPEAKER: My name is Samuel Wilcher.  
20      I'm from Baton Rouge, Louisiana. And I want to  
21      thank the panel for giving me an opportunity to  
22      discuss my -- my reservations about the regulation

1       that you're about to undergo -- the regulation and  
2       concerns you're about to undergo. The need for  
3       tougher regulations on coal ash is now. We in the  
4       state of Louisiana have been dealt a  
5       well-documented mix of manmade disasters that stem  
6       from lax regulations and oversight. What kind of  
7       message are we sending to our children if profits  
8       are put ahead of the air we breathe and the water  
9       we drink and the soil that sustains us?

10               In my home city of Baton Rouge, we are  
11       affected by pollution from the Big Cajun II Power  
12       Plant. This contamination affects the mighty  
13       Mississippi River, as well as other water sources  
14       in the area. In Hurricane Katrina, profits were  
15       put ahead of the safety of our community. Due to  
16       this manmade disaster, I lost my home. My health  
17       should not be put at risk due to industry  
18       shortcomings.

19               In New Orleans, Charlie -- Chinese  
20       drywall has been labeled as hazardous, yet we see  
21       that activists such as Brad Pitt and the Make It  
22       Right Foundation and Wendall Pierce with the

1 Pontchartrain Park Foundation have proven that  
2 sustainable design can be achieved if we allow for  
3 innovation.

4 The "P" in EPA stands for protection,  
5 not profits. I'm calling on the administration  
6 and Congress to enact laws on coal ash. Today, my  
7 colleagues and I believe in a sustainable future.  
8 And this vision can only be achieved by the  
9 administration and Congress working together. I  
10 am pleading with this panel to -- to please not  
11 bury your heads in the sand, especially if that  
12 beach is anywhere near a coal ash landfill or  
13 power plant. Thank you.

14 MR. BEHAN: Thank you.

15 SPEAKER: Good afternoon. I'm David  
16 Schanbacher. I'm with the Office of the Texas  
17 Comptroller of Public Accounts. EPA's proposed  
18 rules to regulate coal ash are not the best way to  
19 address this issue and will unnecessarily harm  
20 both the economy and the environment. According  
21 to EPA's Web site, the -- the proposed rules are  
22 intended to address potential environmental

1 problems at coal ash disposal facilities, such as  
2 landfills and impoundments. We've all heard about  
3 the regrettable event in Tennessee that showed  
4 that disposal facilities at some sites need to be  
5 improved.

6 But recycling coal ash is good for the  
7 environment and good for the economy. Quoting  
8 from EPA's own Web site, industrial materials such  
9 as coal ash are valuable products of industrial  
10 processes. Putting these commodities into  
11 productive use saves resources and contributes to  
12 a sustainable future.

13 Even though EPA has attempted to allow  
14 the continued recycling of coal ash, these rules,  
15 if adopted, will have the unintended consequence  
16 of discouraging it. In a December 22nd letter to  
17 EPA Administrator Jackson, ASTM International said  
18 that designation of fly ash as a hazardous waste,  
19 even with an exclusion for beneficial use, will  
20 likely result in little or no fly ash being -- re  
21 -- being used in beneficial -- excuse me -- being  
22 used beneficially in concrete or other



1 applications that supports sustainability options  
2 -- objectives.

3 The Texas state economy will suffer if  
4 the beneficial use of coal ash is eliminated.  
5 Since 2005, the Texas Department of Transportation  
6 has used about 185,000 to 275,000 tons of coal ash  
7 per year as a concrete additive. The coal ash  
8 additive reduces the incidence of ASR distress and  
9 the costly repairs to structures such as bridges.  
10 The elimination of coal ash as a concrete additive  
11 will require the use of more costly and sometimes  
12 less effective substitutes.

13 The previously recycled coal ash must  
14 now be disposed; the very activity that EPA's Web  
15 site says is causing the environmental concerns.  
16 The coal ash waste will soon exceed the capacity  
17 of current disposal resources and will likely  
18 cause operational regulatory issues for coal-fired  
19 power plants. These power plants generate over 37  
20 percent of Texas' electricity. Any -- any  
21 disruption to this reliable baseline power could  
22 raise electricity prices, jeopardize the electric

1       grid, and further strain already struggling state  
2       economies.

3               A review of Texas regulations,  
4       standards, and practices related to the use of  
5       coal ash conducted for the EPA by the Energy and  
6       Environment Research Center concluded that Texas  
7       has a successful program to encourage the  
8       beneficial use of coal ash. One of the keys to  
9       Texas' success is the flexibility TCEQ has to  
10      allow beneficial use of coal ash while retaining  
11      the regulatory option to correct any problems that  
12      arise. Further, the report says that one of the  
13      threats that could hinder recycling in the future  
14      is the very action that EPA is proposing with  
15      these rules.

16             In short, proper regulation at the state  
17      level is a more effective vehicle for coal ash reg  
18      -- coal ash regulation than a one-size-fits-all  
19      national program. The nation's economy should not  
20      be made to pay for the mistakes at a single site.  
21      Thank you.

22             MR. BEHAN: Thank you. 225.

1                   SPEAKER: Greetings. My name is Gary  
2       Stuard. And I am the founder and executive  
3       director of the Interfaith Environmental Alliance,  
4       or IEA, an organization whose mission is to assist  
5       congregations in greening themselves and also to  
6       formate -- or create local alliances of faith  
7       communities throughout the state of Texas to  
8       address local environmental issues, as well as  
9       through non-partisan but political action advocate  
10      for progressive environmental policies at the  
11      state and national level.

12                  As an alliance of people of faith, IEA  
13      -- or the Interfaith Environmental Alliance -- is  
14      naturally concerned about truth, including  
15      scientific truth; the love of God, however we  
16      define god; and the love of neighbor; and the  
17      advancement of the common good. As people of  
18      faith, we accept the scientific evidence that  
19      shows conclusively that coal ash is highly toxic  
20      and hazardous to humans and ecosystems, as being  
21      shown by what has been happening to our water  
22      resources being contaminated with mercury, lead,

1       and other toxins. For example, the state of Texas  
2       has sixteen lakes heavily contaminated from coal  
3       waste. People's lives are being harmed, and that  
4       is a religious issue.

5               Since all faith traditions stress that  
6       we cannot love God -- however we understand God --  
7       without loving and caring, protecting our  
8       neighbor, IEA urges EPA to quickly establish  
9       aggressively progressive regulations on coal ash.  
10      It's become clear that there's no such thing as  
11      clean coal energy and that for the sake of the  
12      Earth's ecosystems and the welfare of human  
13      communities, everything must be done at all levels  
14      to rapidly reduce and ultimately eliminate our  
15      nation's dependence on coal and other coal-based  
16      fuels.

17             Increased coal waste disposal costs will  
18      give companies an incentive to move beyond the use  
19      of coal byproducts. IEA also encourages EPA to do  
20      what it can to have criminal investigations  
21      initiated and criminal prosecutions pursued  
22      against TCEQ, the Railroad -- Texas Railroad

1 Commission, Governor Rick Perry, energy  
2 corporations, and other governmental corporate  
3 bodies or individuals who have undermined,  
4 thwarted, or violated environmental laws here in  
5 the state of Texas, and who have criminally  
6 exposed Texas public to environmental risks that  
7 undermine public health.

8 In religious tradition, we call that  
9 sin. According to all faith traditions, one  
10 cannot both serve -- love and serve God or the  
11 moral good and money or profit. As Jesus of  
12 Nazareth put it, you will either love the one and  
13 hate the other, or you will hate the one and love  
14 the other. Please remember, EPA, that  
15 environmental justice and the ecological common  
16 good in the eyes of God trumps always corporate  
17 profit. Thank you, and God bless.

18 MR. BEHAN: Thank you. 226.

19 SPEAKER: Good afternoon. My name is  
20 Lev Guter. And I am a concerned citizen coming to  
21 you today from Arkansas. I live in Little Rock.  
22 I just want to make three quick points. The first

1       one is to give some examples of contamination that  
2       is happening right now in Arkansas from coal ash.  
3       The second point I'd like to make is just to  
4       really touch on the regulatory state climate of  
5       what's the Arkansas Department of Environmental  
6       Quality, ADEQ -- sort of what their culture is  
7       when it comes to coal ash. And then the third  
8       point that I would like to make is to highlight  
9       one of the reasons why Subtitle C is a much better  
10      option than Subtitle D.

11               So the contamination that's happening  
12      right now -- I'm sure you've heard it before  
13      today, this report cited -- but it's In Harm's  
14      Way, and it was done by the Environmental  
15      Integrity Project. And the first two cases are  
16      from Arkansas. The -- the first one is the  
17      Independence Coal Plant. And the contamination of  
18      the 34 monitoring wells have been documented for  
19      widespread groundwater contamination. And we're  
20      talking heavy metals, mercury. That's 34 wells.  
21      That's -- that's drinking wells that people are  
22      consuming every day.

1                   And the second problematic coal ash site  
2           that was documented in the report is from Flint  
3           Creek. And that's another coal ash site where  
4           there has been demonstrated damage to groundwater  
5           360 feet away from the actual site. So this water  
6           is -- it's moving, and people are drinking it.

7                   Just quickly, the Arkansas Department of  
8           Environmental Quality follows, in general, the  
9           minimum standards that the federal regulations  
10          impose. There are really smart people,  
11          hardworking people at ADEQ, but we hear time and  
12          again, you know, the regulations aren't there. If  
13          you want us to have stricter regulations, change  
14          the regulations. Well, that's why we're here  
15          today.

16                  And the third point that I'd like to  
17          make is, this is an environmental justice issue.  
18          Because of Subtitle D, my understanding is that a  
19          large portion would be regulated by citizen suits.  
20          And the poor communities, a lot of them are  
21          communities of color, they don't have the  
22          resources to hire lawyers to enforce safe drinking

1 water. And that is something that they should be  
2 entitled to. They shouldn't have to fight for  
3 clean drinking water. That is something that the  
4 federal government should make sure all citizens  
5 have. Thank you.

6 MR. BEHAN: Thank you. Number 82,  
7 Number 84, 227, 228. 228? 229. We're a little  
8 ahead of schedule, so I'm going to take some of  
9 the walk-ins right now. So that's the 200 series.  
10 Okay. What was the -- what number do you have,  
11 ma'am?

12 SPEAKER: 82.

13 SPEAKER: 108.

14 MR. BEHAN: Okay. Go ahead, ma'am.

15 SPEAKER: Okay. My name is Victoria  
16 Tamayo. And to all of my students, I'm Ms.  
17 Tamayo. Teaching in New Orleans is the most  
18 unique experience for me, and I absolutely love  
19 it. I adore my students. And my students and I  
20 share -- we share our lives together. And every  
21 day I see them, they just share more and more.

22 When I became aware of the coal ash



1       issue and how close to our home it is, the most  
2       important thing to me is knowing that my students  
3       are at the very least environmentally safe and  
4       educated. Because sometimes when they go home,  
5       their homes are empty or not altogether and they  
6       need to know that the water they drink and the  
7       streets that they play on are safe for them.

8               When my fourth graders ask me about  
9       their neighborhoods, they need to know they're  
10      safe and that the status -- their status as  
11      Louisiana residents and United States citizens  
12      grants them the right to know policymakers have  
13      their well-being in mind.

14             This is about prevention, not about the  
15      gravity of change. The gravity lies with the lack  
16      of change. As a native of the most culturally  
17      rich and diverse city, New Orleans, I refuse to  
18      let myself or my students be environmental  
19      refugees again. Adopt Subtitle C. Thank you.

20             MR. BEHAN: Thank you. 84.

21             SPEAKER: Thank you for this opportunity  
22      to discuss. My name is James Hicks, Executive

1 Vice President of Research and Development of  
2 Ceratech, Incorporated. Ceratech provides cements  
3 made specifically from coal combustion products or  
4 CCPs. Ceratech supplies fly ash-based cements and  
5 products made from those cements to many  
6 municipalities, state departments of  
7 transportation, the federal government, and the  
8 U.S. military in stateside and theater of war  
9 zones for critical needed high-performance  
10 products.

11 Ceratech will be put out of business if  
12 CCPs are classified as hazardous. Classifying  
13 CCPs as special will evoke the connotation of some  
14 variety of sort of hazardous or probably  
15 hazardous. Further, beneficial use of CCPs can be  
16 linked under EPA guidelines to any other  
17 classification of CCPs.

18 I support coal ash disposal regulations  
19 that protect human health and the environment while  
20 encouraging greater recycling of fly ash and CCPs.  
21 These goals cannot be both accomplished if the  
22 Environmental Protection Agency designates coal

1 ash as hazardous or special waste.

2           People do not want a material in their  
3 homes, schools, or neighborhoods if it is  
4 considered hazardous in a landfill. Businesses  
5 will not want to risk being sued for using a  
6 material that is considered hazardous in a  
7 landfill or risk losing the environmental benefits  
8 that come with recycling millions of tons of this  
9 material, including conserving landfill space and  
10 natural resources, as well as avoiding the  
11 emissions of millions of tons of greenhouse gases  
12 for manufacturing the materials that recycled coal  
13 ash replaces.

14           There is no good reason for destroying  
15 coal ash recycling. Characteristic waste, which  
16 exhibit one or more of the characteristics defined  
17 in 40 CFR Subpart C, are ignitability,  
18 corrosivity, reactivity, and toxicity. Coal  
19 combustion products meet none of these category  
20 designations.

21           Further, a solid waste as defined in  
22 261.2 is a hazardous waste if it exhibits any of

1       those characteristics. CCPs do not have any of  
2       those characteristics. The stigma associated with  
3       CCP if classified as any form of Subtitle C or  
4       special waste is untenable. Whether disposed or  
5       used, the fact that it could be either and the  
6       beneficially used CCR and the disposed CCR come from  
7       the same source can be shown to be linked under  
8       EPA guidelines. Your consideration to avoid  
9       reclassification of CCPs as any form of Subtitle C  
10      or special is appreciated.

11               MR. BEHAN: Thank you. 227.

12               SPEAKER: Hi, I'm Jeffrey Davis,  
13      environmental manager for NRG Energy,  
14      Incorporated. NRG owns and operates one of the  
15      country's largest power generation portfolios,  
16      including coal plants in Texas, Louisiana, New  
17      York, and Delaware. NRG supports the development  
18      of federal regulations for coal combustion  
19      residuals under RCRA's Subtitle D non-hazardous  
20      waste program. We believe that a non-hazardous  
21      program is the best path forward because it will  
22      enable EPA to establish a program that protects

1       the environment while not impacting beneficial use  
2       or the economy. NRG will provide written comments  
3       before the November 19th deadline. We support the  
4       comments made by the Texas Coal Combustion  
5       Products Coalition and the Utilities Solid Waste  
6       Activities Group.

7               Texas has a strong solid waste disposal  
8       program, and it has successfully managed disposal  
9       of CCRs under this program for decades. The  
10      program in Texas provides the regulatory oversight  
11      necessary to ensure that management of CCRs is  
12      protective of human health and environment. NRG  
13      requests that EPA work with the states and develop  
14      a program that recognizes the role of each state  
15      to develop their own regulatory programs to ensure  
16      compliance with the newly adopted federal  
17      criteria.

18             Most of the coal combustion byproducts  
19      produced at our Texas plants are beneficially  
20      used, primarily in the manufacture of cement  
21      products. EPA has publicly stated that a  
22      hazardous program would result in an increase in

1        recycling. We believe that a federal program that  
2        labeled a product that had been safely used for  
3        decades as hazardous will have the opposite effect  
4        and will severely impact our recycling efforts  
5        because of the stigma associated with a hazardous  
6        designation.

7                Our coal ash users and recyclers have  
8        indicated that any hazardous waste label on coal  
9        ash could end beneficial use practices due to --  
10       to liability and marketing concerns. This would  
11       result in greater volumes of coal ash generated at  
12       the NRG plants having to be managed and  
13       unnecessarily fill up landfill space rather than  
14       sold for beneficial use. In addition, the cement  
15       industry will have to make up for the loss of  
16       recycled coal ash resulting in a net increase of  
17       carbon dioxide emissions.

18               In closing, NRG supports the regulations  
19       of CCRs as a non-hazardous waste. There is simply  
20       no reason for EPA to pursue a hazardous waste  
21       regulation when a non-hazardous program offers the  
22       same level of protection without crippling

1       beneficial use and imposing unnecessary cost on  
2       electric power sector. I thank the EPA for the  
3       opportunity to present these comments.

4               MR. BEHAN: Thank you. 229.

5               SPEAKER: Good afternoon. My name is  
6       Shane Strelsky. And I'm a site manager for Harsco  
7       Minerals, a division of the Harsco Corporation. I  
8       work at Harsco's Rockdale, Texas location, and I  
9       manage four regional plants located in Texas,  
10      Kansas, and Missouri. I have been working in the  
11      boiler slag processing field for 20 years. The  
12      plants I manage employ 39 workers, many of them  
13      have been working in the boiler slag processing  
14      industry for 10 to 39 years.

15              We produce mainly abrasives and granules  
16      for roofing shingles from boiler slag. Boiler  
17      slag is one of the listed coal combustion  
18      byproducts included in this proposed regulation.

19              Harsco takes employees' health safety  
20      very seriously. We have participated in  
21      industrial hygiene surveys, we conduct -- we  
22      conduct regular safety meetings. And safety is an

1       important part of how we do our business every  
2       day. Environmental permit compliance is also an  
3       important part of the way we conduct our business.  
4       In 20 years of operations, I do not know of any  
5       environmental issues caused by the boiler slag  
6       process by my facilities.

7               I am in support of regulating boiler  
8       slag under Subtitle D. Some facts that  
9       demonstrate that there is no reasonable basis for  
10      subjecting boiler slag to regulation under  
11      Subtitle C are as follows: When extremely hot  
12      molten coal ash is quenched with cold water, the  
13      coal ash is vitrified and becomes a solid glassy  
14      matrix known boiler slag. Because boiler slag is  
15      vitrified, it is a very durable and  
16      environmentally stable material that effectively  
17      immobilizes its chemical constituents.

18             Historically, boiler slag has always  
19      passed the TLC -- TCLP testing and has never  
20      exhibited any hazardous waste characteristics. I  
21      am not aware of any environmental issues brought  
22      forth by any of my customers. Any and all TCLP



1 testing requested by any of my customers has never  
2 indicated any issues. Boiler slag makes up only 2  
3 percent of total coal combustion byproducts, and  
4 98 percent of it is recycled into valuable  
5 reusable products. Boiler slag has been  
6 beneficially used since the 1930's as an abrasive.  
7 Boiler slag is not commonly stored in surface  
8 impoundments. Harsco does not store any of our  
9 products, raw or processed, in any surface  
10 impoundments.

11 Regulating boiler slag destined for  
12 disposal as a special waste under Subtitle C would  
13 unfairly stigmatize beneficially reused boiler  
14 slag that I have been processing for many years.  
15 My customers will be confused and concerned about  
16 purchasing products that are seen to be  
17 essentially the same as Subtitle C waste.

18 I recognize the need for proper and  
19 environmentally sound standards for regulating the  
20 2 percent of boiler slag that is discarded rather  
21 than beneficially reuse. However, I feel that the  
22 associated stigma that will be associated with

1       Subtitle C will adversely impact my business. I  
2       am for Subtitle D. Thank you.

3               MR. BEHAN: Thank you. 108.

4               SPEAKER: Good afternoon. My name is  
5       Carol Okstel. And I'm a supporter of  
6       Earthjustice, the Sierra Club, and Defenders of  
7       Wildlife. I want to thank you for holding these  
8       hearings and for your full attention.

9               The EPA already knows, as does the coal  
10      electric industry, that coal ash is an awful  
11      arsenal of toxic pollutants that are implicated in  
12      cancers, organ disease, respiratory illness,  
13      neurological damage, and reproductive and  
14      developmental problems. The EPA already knows, as  
15      does the coal electric industry, that the toxic  
16      contaminates in billions upon billions of gallons  
17      of coal ash in dump sites and waste ponds across  
18      the country have wrecked poisonous devastation  
19      upon the environment, upon ecosystems, marine  
20      life, wildlife, the air we breathe, our sources of  
21      drinking water, and the physical and economic  
22      health of human beings and the communities

1       afflicted. Yet the coal electric industry in an  
2       amazing theater of the absurd is pressuring and  
3       maneuvering the EPA to accept and abet some of the  
4       indust -- industry's most unconscionable practices  
5       and assertions of coal ash's harmlessness.

6               But the industry does concede if coal  
7       ash actually must be regulated, it should  
8       certainly fall under RCRA's Subtitle D, the  
9       non-hazardous designation, or in other words, it's  
10      nothing more harmful than coffee grounds. Let's  
11      call this what it really is, criminal deceit and  
12      recklessness in the name of profit, responsible  
13      for a swath of sickness, death, and ruination  
14      across the United States.

15             Well, in the name of all on the planet  
16      that has been afflicted by this scourge and  
17      through the power of genuine human and divine  
18      justice, if ever an industry and its toxic product  
19      residual needed stringent regulation and the EPA  
20      needed to live up to its mandate, coal ash is it.

21             Nothing short of Subtitle C is  
22      acceptable with the designation of special waste,

1 the regulation's strongest protections, federally  
2 enforceable safeguards, and the phaseout of all  
3 perilous waste ponds. Anything less would be  
4 tantamount to federally sanctioned genocide across  
5 species because we all know that coal ash sickens,  
6 devastates, and kills. Thank you again for your  
7 attention.

8 MR. BEHAN: Thank you. Number 87, 88,  
9 89, and 90, could you come forward. Number 230,  
10 Number 87, if you could come to the podium.

11 SPEAKER: My name is Bruce Haslerud. I  
12 am one of the employee owners of Black Diamond  
13 Granules, a company located in St. Paul,  
14 Minnesota, which is about 1,000 miles north of  
15 here. Our company processes boiler slag granules  
16 into roofing granules and abrasives. As an owner  
17 of a profitable, surviving Minnesota business, I  
18 came here to ask EPA to consider scientific data,  
19 as well as the practical implications of  
20 regulating boiler slag as a Subtitle C hazardous  
21 waste.

22 I believe that as a matter of sound

1 science and avoiding a potentially devastating  
2 economic impact that EPA determine coal slag to be  
3 regulated as a Subtitle D material. Although we  
4 are a small company, we have recycled over 3 point  
5 million -- 3.1 million tons of boiler slag  
6 granules into useable products during our  
7 existence.

8 At EPA's Arlington, Virginia public  
9 meeting on August 30th, there were several  
10 allegations made by a competitor selling a  
11 competing product that unencapsulated boiler slag  
12 is a danger and threat to human health. It was  
13 also alleged that coal slag abrasives release  
14 hazardous airborne pollutants.

15 I am compelled to share with you and for  
16 the public record the results of an independent,  
17 third-party laboratory analysis on my slag fines.  
18 The study was conducted by Pace Analytical, and it  
19 analyzed particulate fines from my plant, which  
20 are even finer than the slag granule residue from  
21 an abrasive blasting job. The data show that any  
22 metals in the slag granules maintain their

1       encapsulated status and are not harmful. The data  
2       show that the particulate fines are similar in  
3       nature to soil in your backyard. I strongly  
4       encourage EPA to review this laboratory study and  
5       technical data.

6               As you may know, 80 percent of all  
7       shingles contain boiler slag. If EPA declares  
8       boiler slag to be a special waste under Subtitle C  
9       because -- besides the cost of roof repairs going  
10      up, homeowner's insurance would also increase.  
11      This is because of the stigma of Subtitle C  
12      classification.

13             Finally, the State of Minnesota  
14      currently encourages recycling of old shingles by  
15      allowing asphalt for state roadways to include a  
16      percentage of recycled shingles, but Minnesota  
17      does not permit hazardous waste to be recycled.  
18      If boiler slag is declared a special waste under  
19      Subtitle C, EPA will be gutting a program that  
20      allows for 100 percent recycling, undercutting its  
21      own mission to reduce, reuse, recycle. Thank you  
22      for your consideration.

1 MR. BEHAN: Thank you. Number 88.

2 SPEAKER: Hello, my name is Devin  
3 Martin, from Lafayette, Louisiana. I'm here  
4 representing myself, the people of the great state  
5 of Louisiana, as well as the Sierra Club Delta  
6 Chapter. Thank you for the opportunity to speak  
7 today.

8 The Sierra Club Delta Chapter is made up  
9 of over 3,000 members and thousands of more  
10 volunteers, some of whom you've already heard from  
11 today who are from places as far as Shreveport and  
12 the Kisatchie Forest, all the way down to the  
13 mouth of the Mississippi River in Venice.

14 Like Texas, the people of Louisiana are  
15 proud. We're proud of our history. We're proud  
16 of our unique and diverse heritage. And we're  
17 proud of our environment that has helped to shape  
18 who we are as a people. We have pride in the idea  
19 of being a sportsman's paradise.

20 And one of the reasons I'm urging you  
21 today to consider coal ash as a Subtitle C  
22 hazardous material is because we're afraid that

1 heavy metals from coal ash might leach into our  
2 environments and get into the wildlife and  
3 fisheries that we are so dependent upon and proud  
4 of as part of who we are as Louisiana citizens.  
5 Because of bio accumulation, any heavy metals that  
6 escape into the environment can be concentrated in  
7 the body of a fish or plants that people use and  
8 consume, especially hunters and fishers. So we  
9 need to be extra careful when dealing with an area  
10 like Louisiana where so many people are hunters  
11 and fishers.

12 Also, you know, we're not proud of  
13 everything that we have in Louisiana. We're not  
14 proud of being an environmental sacrifice zone for  
15 energy companies and being a resource colony for  
16 other areas. We're not proud of the failure of  
17 our state government to protect our own people and  
18 our people's interest and the interest of future  
19 generations. And we're not proud of the lies that  
20 are constantly told to us by corporate executives  
21 and politicians. Lies like I'm hearing today.

22 Coal ash is toxic. There is no other --



1       there's no getting around it. Coal is dirty.  
2       There is no clean coal. And there is no clean  
3       coal ash. Those who would try to say that we  
4       shouldn't regulate coal as a hazardous material  
5       because of an -- because of economic reasons or  
6       because of a stigma that might come with it, shame  
7       on you. Shame on you.

8               Coal is a hazardous material. The  
9       stigma that goes with it is deserved, so you need  
10      to live with this. You need to live with the  
11      realization that we can't always have things both  
12      ways. These companies who are afraid of the  
13      stigma are trying to keep consumers from the  
14      truth, from learning that what is in their  
15      products may be harmful. So I urge the EPA today  
16      to except and recommend using Subtitle C as  
17      regulating coal ash as a hazardous material.  
18      Thank you.

19             MR. BEHAN: Thank you. Number 89.

20             SPEAKER: Good afternoon. My name is  
21      Terry Peterson. I'm the president of Boral  
22      Material Technologies, a small ash marketing

1       company based out of Roswell, Georgia. I've been  
2       in the CCP industry since 1983. And during my  
3       career, I've been involved with all facets of CCP  
4       management. Those include beneficial use,  
5       primarily. I've also been involved in landfill  
6       design and construction. An important part of our  
7       business has been research and development and  
8       looking for opportunities for additional  
9       beneficial uses of CCPs. And also involved in  
10      engineering of ash handling systems. Today, I'd  
11      like to focus my comments on the stigma associated  
12      with Subtitle C designation for CCRs. Excuse me.

13               Since 1983, I've observed and  
14      experienced the challenges associated with  
15      matching CCR production to CCP demand. Generally  
16      speaking, the imbalance that in -- inevitably  
17      occurs between the two results in excess CCPs  
18      being placed in landfills. Effectively, this  
19      excess fly ash disposed has the exact same  
20      characteristics as the fly ash being sold to end  
21      users for beneficial use. Designating fly ash  
22      being sold or beneficially used as acceptable and

1       then classifying that same material as hazardous  
2       waste when land-filled under Subtitle C confuses  
3       end users since the fly ash is the same  
4       regardless. This confusion leads to concerns  
5       around future liability for our end user  
6       customers, as well as CCP producers. And in many  
7       cases, eliminates their desire to purchase or sell  
8       CCPs for beneficial use.

9               Another significant challenge to the CCP  
10       industry resulting from the stigma of Subtitle C  
11       is tracting -- is attracting private investment to  
12       develop technologies or products that will promote  
13       beneficial use of CCPs. Even if every cubic yard  
14       of concrete in the U.S. contains optimized volumes  
15       of CCPs, there would still be a substantial amount  
16       of CCRs remaining available. New technologies and  
17       products will be critical to continue to expand  
18       beneficial uses beyond conquering (sic ?). Investors will  
19       not move forward if there are any concern as to  
20       the future classification of CCPs under Subtitle  
21       C.

22               The overall impact of Subtitle C could

1       effectively reverse the successful beneficial uses  
2       currently in place, as well as eliminate the  
3       future investment required to sustain beneficial  
4       uses. This reversal will eliminate the  
5       substantial benefit of avoiding 15 million tons of  
6       annual CO2 emissions, require extraction of  
7       non-renewable resources to fill the void left when  
8       users not -- opt not to use CCPs and obviously  
9       consume a large amount of landfill space.

10               We are convinced that the EPA can both  
11       fulfill their obligation to protect citizens by  
12       reinstating Subtitle D designation for CCRs while  
13       also promoting responsible beneficial uses, which  
14       will show us -- allow us to maintain our natural  
15       resources, as well as the clean air benefit  
16       associated with CCP reuse. Thank you very much.

17               MR. BEHAN: Thank you. Number 90.

18               SPEAKER: Good afternoon. My name is  
19       James Birkhead. I'm the environmental supervisor  
20       at Luminant's Three Oaks Mines, which are located  
21       in Lee and Bastrop Counties of Texas. I  
22       appreciate the opportunity to provide my statement

1       today.

2               Across Luminant's mines, coal combustion  
3       residuals play a very important role in our  
4       reclamation practices. As a standard practice,  
5       they have been effectively used for mine fill and  
6       contouring across the state for many years with no  
7       proven adverse environmental impacts. Even before  
8       federal and state laws were written, Luminant  
9       demonstrated a strong commitment to responsible  
10      land reclamation and management. We ensure the  
11      quality of our reclaimed land, its groundwater,  
12      and soil through rigorous and extensive  
13      monitoring. We have never experienced any issues  
14      with our groundwater from using CCRs for mine fill  
15      and contouring.

16             We take great pride in our reclamation  
17      program, and for good reason. We've received  
18      nearly 90 awards for reclamation excellence  
19      throughout the years. Most notably, in 2009, we  
20      received the U.S. Department of the Interior  
21      Office of Surface Mining Director's Award. And  
22      this was for an unprecedented fifth time. This

1       was also the second consecutive year Luminant  
2       received OSM's highest distinction.

3               The primary goal of our reclamation  
4       program is to return mine lands to a productive  
5       post-mine use and to achieve full release of all  
6       regulatory obligations. To that end, we've  
7       reclaimed more than 66,000 acres, and we've  
8       secured the successful release of bond liability  
9       on over 29,000 acres. Our attention to the  
10      development of quality post-mine soil is the  
11      cornerstone of our successful mine reclamation  
12      program.

13             We've also significantly increased prime  
14      farmland in our post-mine soils. Prime farmland  
15      soils are those that have been -- that have the  
16      best combination of physical and chemical  
17      characteristics for producing food, feed, forage,  
18      fiber and oilseed crops. Our land is known for  
19      its quality and it's in high demand when it's  
20      released for sale back to the public. Using CCRs  
21      as mine fill and for contouring has contributed to  
22      this success.

1           In summary, Luminant, in addition to  
2       over 200 members of the U.S. Congress, 43 states,  
3       and numerous federal agencies strongly oppose the  
4       regulation of CCRs as a hazardous material under  
5       RCRA Subtitle C hazardous waste program. And we  
6       recommend that the EPA continue to allow states to  
7       run their own program. Thank you for this  
8       opportunity to comment.

9           MR. BEHAN: Thank you. 230.

10          SPEAKER: Good afternoon. My name is  
11       Jeff Haseltine. I live in Abilene, a West Texas  
12       city of -- of over 100,000 people. I'm a  
13       university administrator and a member of a very  
14       conservative local church.

15          This past Sunday, a university colleague  
16       came up to me and said, well, how's Tenaska doing?  
17       Have they gone away yet? He was referring to the  
18       Nebraska energy company, Tenaska, a huge privately  
19       owned energy company, which having made lots of  
20       money in the natural gas energy business, is now  
21       trying to get into the coal burning business.  
22       This colleague knows that I'm one of the many

1       local people trying to stop Tenaska from building  
2       a coal-fired plant in our area. I told him, no,  
3       Tenaska hasn't gone away. They're still scouring  
4       the region, looking for water after Abilene told  
5       them, we weren't going to give it to them.

6               My colleague said simply, man needs to  
7       learn to stop fouling his own nest. Even the  
8       birds know better than to do that. And that made  
9       me think. That's absolutely true. We need to  
10      stop fouling our own nest. But the problem with  
11      our local issue, the Tenaska plant will crank out  
12      27 truckloads of ash per day, every day, over its  
13      50-year lifespan. The problem is that Tenaska is  
14      not going to foul their own nest. Their nest is  
15      Omaha, Nebraska, over 600 miles away. The problem  
16      isn't that man needs to learn to stop fouling his  
17      own nest, it's that man needs to be prevented from  
18      fouling somebody else's nest.

19             Now, we've asked our own state agency,  
20      the Texas Commission on Environmental Quality, to  
21      do just that. But the TCEQ has a history of  
22      simply rubber stamping whatever these huge energy



1       companies plop down on their desk. The result is  
2       that the local people, trying to maintain the  
3       quality of our own area nest, have no effective  
4       means of preventing some giant corporate Tenaska  
5       bird from flying in on the wings of three and a  
6       half billion dollars of borrowed money and fouling  
7       our nest for half a century.

8               That's why even reluctantly from the  
9       standpoint of many conservatives we ask the EPA to  
10      step in on a federal level and to enact some tough  
11      laws regarding coal ash. If you can help us shoo  
12      away the big birds, that would be wonderful. But  
13      at the very least, we ask you to make them clean  
14      up after themselves. Enact Subtitle C, please.  
15      Thank you.

16             MR. BEHAN: Thank you. Numbers 92, 93,  
17      94. If 91 has arrived, you can come up, too.  
18      231, 232, come on up. Number 92. Go ahead when  
19      you're ready.

20             SPEAKER: Good afternoon. My name is  
21      Matthew Smith. And I'm currently employed by  
22      Separation Technologies, a company which processes

1       and markets fly ash.

2               We've heard some great arguments today  
3       for both Subtitle C and Subtitle D. After hearing  
4       these arguments, I formed the opinion that we  
5       could distill most of these discussions down to  
6       one question. Which is better for the human  
7       health, environment, and the economy, placing CCRs  
8       in landfills or encapsulating them in concrete.

9               I believe encapsulation is far better,  
10       and also believe Subtitle D supports this option  
11       while Subtitle -- Subtitle E -- C eliminates it.  
12       I support cleaner production of electricity, but  
13       until that becomes a reality, we have to do  
14       something with the CCRs. Recycling them is the  
15       best option. That's why I support Subtitle D.  
16       Thank you.

17              MR. BEHAN: Thank you. Number 93.

18              SPEAKER: Good afternoon. I'm Joey  
19       Craft. I'm also with Separation Technologies from  
20       Mississippi. I also oversee all safety procedures  
21       and assure that they are followed according to  
22       OSHA and EPA standards.

1                   Our company handles the process of fly  
2       ash that is supplied to concrete companies  
3       throughout Mississippi, Alabama, and Louisiana.  
4       Our ash has helped in the rebuilding process of  
5       all -- of some bridges and businesses after  
6       Hurricane Katrina five years ago. That's why I'm  
7       opposed to the Subtitle C regulation on fly ash  
8       because of the impact that it would take on our  
9       economy. There is a lot of people that would work  
10      in this field and industry that could lose a job  
11      and not be able to support their families. As a  
12      family man, I -- I need my job to provide for my  
13      wife and my -- my daughters.

14                  So with that being said, I'm here to  
15      protect my job, my family, my coworkers, and my  
16      company from any regulations that would cost us  
17      our business. I believe we need to pay more  
18      attention to the oil spill in -- that happened in  
19      the coast than -- than the problems that you would  
20      think fly ash is doing to our environment right  
21      now.

22                  So in closing, my question to everyone

1       here today, would we be here having these meetings  
2       if the Tennessee or Oklahoma incident ever  
3       occurred? Thank you.

4               MR. BEHAN: Thank you. Number 94.

5               SPEAKER: I'd like to thank you all for  
6       the opportunity to speak today and for giving the  
7       public a chance to express their concerns and  
8       their opinions on the issues concerning fly ash.  
9       My name is Frank Cooper. I'm also with Separation  
10      Technologies. Our company is in the business of  
11      recycling fly ash. We have a process of  
12      separation that separates the carbon particles out  
13      of the ash. We're able to take these carbon  
14      particles, send them back to the power plant to be  
15      recycled through the burner once again. The  
16      mineral particles, as we call it, are used in  
17      block roadwork, bridgework -- a lot of other  
18      beneficial things that they're used for to keep  
19      them out of landfills.

20              Unfortunately, I know with every bad  
21      thing, something good can come out of it; but  
22      also, with every good thing, something bad could

1       come out of it. If currently it's labeled under  
2       Subtitle C, then a company like ours would go  
3       away, and what you'd be left with is more and more  
4       material ending up in landfills instead of being  
5       recycled. And eventually, power companies,  
6       they're still going to burn coal to produce power  
7       as long as we still turn these lights on and we  
8       still use this AC system. So what's going to  
9       happen is you're going to have more material being  
10      produced with no place to go.

11               And people talk about landfills.  
12      Eventually, power companies will have to scout new  
13      locations for landfills. And if we don't have a  
14      plan in effect for that, then eventually one day,  
15      all of us may be living next to a landfill. So I  
16      vote for Subtitle D, please. Thank you.

17               MR. BEHAN: Thank you. 231.

18               SPEAKER: Good afternoon. It's been a  
19      long hearing, and I appreciate your -- your  
20      continued attention. My name is Jim Cook. And I  
21      live in Abilene, Texas, which is 40 miles from the  
22      proposed Tenaska coal-fired electric generation

1       plant. And I thank you for listening to me. I  
2       support Subtitle C proposal.

3               Coal ash is toxic and hazardous. The  
4       externalities of coal-fired electric generation  
5       must be considered. Action like the one being  
6       considered here today is much too important to be  
7       based solely on economic issues. It's unfortunate  
8       that a threat like a coal-fired plant in your back  
9       yard must be personal in order to motivate us to  
10      act.

11             I speak for myself and those who have  
12      not yet discovered that coal ash is a personal  
13      threat to them also. Clean coal is a myth. Clean  
14      renewable energy is a reality. If the coal  
15      industry cannot adapt to the proposed regulation,  
16      then perhaps the coal industry should fail.  
17      Renewable energy will succeed no matter what the  
18      level of regulation.

19             Coal burning is bad for the environment  
20      and, therefore, bad for people. Currently, it  
21      seems to be good for the industry. What's the  
22      name of that company? Make Money -- Making Money

1       Having Fun. It's our health being sold for their  
2       wealth.

3               I encourage the EPA to fulfill its  
4       purpose of protecting the environment and the  
5       lives of the citizens that depend on the clean  
6       healthy surroundings. Push back on the industry  
7       on my behalf. Our future must be clean, healthy,  
8       and sustainable. Please assume the responsibility  
9       to regulate coal ash and adopt Subtitle C.

10              If I may add a comment, as an  
11       environmental science teacher, I take issue with  
12       using the term "recycling" in reference to coal  
13       ash. This is greenwashing at its best. The term  
14       suggests sustainable activities. The term  
15       "recycling" is being co-opted to refer to further  
16       distribution of a material which degrades the air,  
17       the water, and human health. Thank you.

18              MR. BEHAN: Thank you.

19              SPEAKER: Hello, my name is Bonnie Mai.  
20       And I'm a student from Hammond, Louisiana. And  
21       I'm concerned about coal ash pollution and the  
22       health of the environment and people today, as

1 well as generations from now. A lot of my  
2 professors actually encouraged me to come here  
3 today instead of attending their classes because  
4 they said that this coal ash hearing is far more  
5 important than their classes. I speak for them,  
6 as well as many other students who could not be  
7 here today. I don't know how many I speak --  
8 people I speak for, but I know that personally, a  
9 lot of people have come up to me and told me to  
10 speak for them and their children and all the  
11 other pairs of lungs that couldn't be here today.  
12 So I'm speaking for them.

13           And we know that the bottom line for  
14 industry is money. I know that many people in the  
15 coal industry are worried about money and jobs.  
16 But we, the people, are already paying the true  
17 cost of coal through our health care costs, our  
18 water treatment costs, and cleaning up major  
19 environmental and health disasters, such as the  
20 Tennessee coal spill. I think that many people  
21 came here today and many people who are unable to  
22 -- to come here today are ready to face the



1 reality and show what the true cost of coal is and  
2 hope that we may gradually transition to using  
3 renewable, sustainable, clean energy.

4 I support Option C because honestly I  
5 don't trust the states to regulate coal ash safely  
6 and to take their citizens' health into  
7 consideration. Option D would not change  
8 anything. Not regulating this dangerous substance  
9 will cost us more in the long run.

10 In closing, I would like to say that I  
11 support the Seven Generation Law of Sustainability  
12 that the Iroquois Native Americans use in all of  
13 their decision-making. When you make laws,  
14 consider how not -- how it won't just benefit you,  
15 but also the next seven generations. I urge you  
16 to consider what is best for humanity today, as  
17 well as the next seven generations. And thank you  
18 for allowing us to comment on this crucial issue.  
19 Thank you.

20 MR. BEHAN: Thank you. 233, 234, 235,  
21 236, 237, 238, 239, 240, 241, 242, 243, 244, 245,  
22 246, 247. Go ahead.

1                   SPEAKER: My name is Lily Stagg. I'm  
2                   from Lafayette, Louisiana. I'm a member of the  
3                   Sierra Club. I'd like to start off by saying that  
4                   I'm hugely honored to have the opportunity to  
5                   speak for the concerned citizens of Louisiana.

6                   As Americans, we have been blessed with  
7                   both beautiful, natural surroundings, including  
8                   abundant natural resources, and a thriving  
9                   industrial economy. However, to whom much is  
10                  given much is expected. We have the  
11                  responsibility of being stewards of our earth, and  
12                  we must keep this in mind when we take advantage  
13                  of these resources.

14                 Unfortunately, too often big industries  
15                 shirk their responsibilities in order to make the  
16                 largest possible profit, as we've seen in the BP  
17                 oil spill, Tennessee coal ash spill, and many  
18                 other man-made disasters throughout American  
19                 history.

20                 Industry's blatant disregard for  
21                 environmental and human well-being can also be  
22                 seen less dramatically in the improper disposal of

1 coal ash waste. Fly ash is carelessly dumped into  
2 unlined landfills where it is leached into the  
3 groundwater supply and also carried with the wind,  
4 polluting the air we breathe.

5           The harmful minerals found in coal ash  
6 cause cancer, birth defects, nervous and  
7 reproductive system disorders, and countless other  
8 serious health complications. Those opposed to  
9 regulations and reform argue that it will cost too  
10 much to take the steps necessary to ensure the  
11 safety of our people and our environment.  
12 However, we say that no amount of money is worth  
13 even one human life, and if we destroy our planet  
14 we cannot buy a new one.

15           Another important aspect less considered  
16 is our global standing. We pride ourselves in  
17 being one of the most advanced nations in the  
18 world, yet people living in the area surrounding  
19 coal ash dumps do not even have access to one of  
20 life's most basic requirements: Clean water.  
21 This is not acceptable.

22           The current system of coal ash waste is

1       not working. The regulations imposed by the  
2       states are weak and fail to protect both mankind  
3       and the environment. We demand clean air. We  
4       demand clean water. Please don't let us down.  
5       Thank you.

6               MR. BEHAN: Thank you.

7               SPEAKER: Thank you to everyone who  
8       worked to make this hearing possible, and I thank  
9       you for the opportunity to voice my concerns. I'm  
10      Karen Keller, of Dallas, Texas, and I'm testifying  
11      as a public citizen.

12              Various types of pollution are major  
13      contributors to my medical problems. Since coal  
14      ash contains many hazardous chemicals, I plead  
15      with the people of the EPA to put strict  
16      regulations on disposal of coal ash.

17              There is a cumulative effect from the  
18      exposure to all toxins in our environment that has  
19      caused my health to deteriorate to the point where  
20      I'm not able to work.

21              My concerns about burning coal for power  
22      and its impact on the environment have come about

1 through my long battle with some unusual health  
2 problems. After years of suffering from a  
3 worsening fatigue, seasonal sinus infections and a  
4 decline in mental ability, I was finally diagnosed  
5 with toxic metal poisoning.

6 People are generally treated according  
7 to their symptoms, but often doctors don't  
8 recognize that toxins are causing the problem, and  
9 they are misdiagnosed and don't receive adequate  
10 treatment.

11 Even though my reactions are infrequent  
12 to allergens these days, they occur spontaneously.  
13 I am still sensitive to products that are commonly  
14 used when I am out in public or I commonly am  
15 exposed to them. This makes me unstable and  
16 uncertain about committing to full-time  
17 employment.

18 My toxic metal test revealed elevated  
19 levels of many of the chemicals that are found in  
20 coal ash, and a filter is recommended for removing  
21 these impurities from my drinking water, and it's  
22 essential to detoxification. But there are many

1 people who can't afford this expensive equipment.

2 My research revealed that high levels of  
3 these toxins are not adequately filtered from  
4 bottled water, which many drink, and I have  
5 concerns about children whose bodies are in  
6 developmental stages. Hot water opens the pores,  
7 causing us to absorb more toxins in our skin  
8 during showers. Coal ash contaminants put all of  
9 us at risk, creating a burden on our society in  
10 many ways.

11 For 20 years, I have diligently searched  
12 for solutions to my health problems. It has cost  
13 me thousands of dollars from myself and insurance  
14 companies. Toxic chemicals are silent killers.  
15 Many people suffer from the effects and are  
16 treated with drugs that add more toxins to their  
17 systems.

18 Technology cannot eliminate all of these  
19 toxins generated in coal production, and the  
20 amount of exposure puts us all at risk for health  
21 problems. I urge adopting the Subtitle C to  
22 regulate coal ash as a hazardous waste. Thank

1       you.

2                   MR. BEHAN:   Thank you.

3                   SPEAKER:   I want to thank you for  
4       listening to my comments today.   I am Charles  
5       Henderson, managing executive of the coal and ash  
6       operations group for Ameren Energy Fuels and  
7       Services, known as Ameren.   We are an  
8       investor-owned utility based in St. Louis,  
9       Missouri, that operates 11 coal-fired plants.

10                  Ameren and our 2.4 million electric  
11       customers will be directly impacted by a final  
12       coal combustion residuals rule.   I have direct  
13       responsibility and knowledge and experience with  
14       beneficial use and management of CCP materials.

15                  Over the past ten years, Ameren has  
16       developed a very robust CCP management and  
17       beneficial use program.   Our CCP beneficial use  
18       program has been impacted recently by not only the  
19       poor state of the economy but also by the issuance  
20       of the EPA's proposed rule seeking to regulate  
21       CCRs.

22                  We have intentionally delayed a

1 multi-year beneficial use project due to the  
2 regulatory uncertainty created by the EPA's  
3 proposed rule potentially labeling CCRs as a  
4 hazardous waste. This project would have created  
5 much-needed construction jobs in Missouri this  
6 year, right now, provide long-term benefits to the  
7 local economy during the construction phase and  
8 long-term benefits to the project development due  
9 to the cost effectiveness of utilizing CCP  
10 materials.

11           Sadly, none of these benefits are being  
12 realized, nor may ever be realized, as the result  
13 of CCRs being labeled potentially as hazardous  
14 materials, and the liability concerns already  
15 created as a result of the EPA's proposed rule.  
16 There is stigma, and the stigma is real and  
17 already present.

18           I want to strongly state our opposition  
19 to the Subtitle C option. Regulating CCPs under  
20 RCRA's hazardous waste program is simply  
21 regulatory overkill that would severely cripple  
22 the CCP beneficial use industry and unnecessarily



1       raise the cost of power to our electric customers.

2               Significant government research and  
3       demonstrations have supported CCP beneficial use  
4       recycling for many years. Please reconsider the  
5       effort to regulate CCPs under RCRA Subtitle C.  
6       Instead, RCRA Subtitle D approach will accomplish  
7       everything essentially necessary to properly  
8       manage CCPs when storing, recycle, beneficially  
9       use, or dispose.

10              Even the EPA has stated that there is no  
11       significant difference in the level of  
12       environmental protection between the proposed  
13       Subtitle D non-hazardous waste approach and its  
14       proposed Subtitle C hazardous waste approach.  
15       There is just no sound reason to pursue the  
16       Subtitle C approach when Subtitle D options offer  
17       the same degree of protection without the  
18       independent risk it burdens the economy, jobs, and  
19       electric customers.

20              A Subtitle D approach is protective of  
21       human health and the environment and is clearly  
22       the correct regulatory approach. Thank you.

1                   MR. BEHAN: Thank you.

2                   SPEAKER: Good afternoon. My name is  
3       Bob Franklin. I'm a professor of American  
4       government at Collin College in Plano, and a  
5       resident of Dallas.

6                   I'm not here to discuss the science, the  
7       chemistry, the health aspects. I think that's  
8       been pretty eloquently laid out for you. I know  
9       that your agency is charged with collecting all  
10      that information, and I know that a lot of the  
11      people that testified here have provided you with  
12      a lot of that information.

13                  I am here more to look at the political  
14      considerations of Subtitle C and Subtitle D. I  
15      understand the Administrative Procedures Act,  
16      which is the act that you are under, and the  
17      reason for this hearing.

18                  I understand that you are charged with  
19      coming up with a common-sense solution to a  
20      problem that takes into account everybody's  
21      position, business, private enterprise,  
22      environmentalists. You have to come up with

1 middle ground that satisfies everybody, and I know  
2 how tough that is.

3           You are here to consider all points of  
4 view. There have been a lot of businesses that  
5 have been here, and, understandably, they are  
6 arguing to protect their interests. That's  
7 understood. We need you to consider all points of  
8 view.

9           Subtitle C seems to be the common-sense  
10 approach to a serious problem. The opposition to  
11 Subtitle C seems to be an accusation that the EPA  
12 cannot come up with a common-sense solution to  
13 something. I don't know about you but I would  
14 feel pretty insulted by that. I think that you  
15 have the ability, you've got the expertise, to  
16 develop a common-sense solution to this problem,  
17 and I think you have done that with Subtitle C.

18           The anti-regulatory position claims that  
19 it has the best interests of people at heart. We  
20 know some of those companies and other industries  
21 from the past, names like Enron and BP and Lehman  
22 Brothers, all of Wall Street and the banking

1 industry. It's pretty clear that these industries  
2 need some sort of regulation; otherwise, they're  
3 going to go off and protect their own interests.

4 I've heard a lot of talk about stigma  
5 here, and that actually surprises me. If stigma  
6 were going to kill an industry, I would think that  
7 the pesticide industry and Monsanto would have  
8 been out of business years ago. They seem to be  
9 thriving very well. Why are they calling it a  
10 stigma? Why not call it an opportunity to be  
11 green and provide for a nice environment for the  
12 rest of us?

13 Subtitle C makes common sense. The  
14 proponents of Subtitle D, therefore, seem to want  
15 to take a non-common-sense approach; and that  
16 doesn't make any sense to me at all. Finally,  
17 Subtitle D leaves the regulation to the individual  
18 states. We have seen that doesn't work.

19 I strongly urge you to adopt Subtitle C.  
20 Thank you.

21 SPEAKER: Hello. My name is Jacob  
22 Pohlman, and I am from Lafayette-Monroe,

1 Louisiana. I'm a student. My major is renewable  
2 resources. I'm also involved with an  
3 environmental group on campus called SPEAK, and  
4 I'm here with the Sierra Club. I would like to  
5 thank the EPA for holding this hearing and  
6 listening to all of the comments.

7 I am here today to speak about the issue  
8 on the lack of regulation for coal ash and the  
9 effect it has on the community around it. In  
10 order to prevent another disaster like the  
11 Tennessee spill, for example, we must put Subtitle  
12 C into effect.

13 I understand the effects it will have on  
14 coal-ash-related companies, but I feel we are in a  
15 progressive era and we cannot keep doing the same  
16 thing over and over. I feel if these companies  
17 are resourceful and prepared for this change, then  
18 they should be able to manage this change without  
19 (inaudible). Again, I am for Subtitle C and more.  
20 Thank you.

21 MR. BEHAN: Ninety-six, 97, 99. Go  
22 ahead, sir.

1                   SPEAKER: Good afternoon, and thank you  
2           for allowing me the opportunity to appear before  
3           you to express my concerns over EPA's proposed  
4           rule regarding the designation of coal combustion  
5           residuals as hazardous material. I am Sam  
6           Russell. I'm county judge of Titus County, which  
7           is located about 100 miles east of Dallas, on  
8           Interstate 30.

9                   Titus County is most fortunate to have  
10          five coal-fired generating units in our county,  
11          three of which are owned by Luminant and the other  
12          two owned by SWEPCO. Neither of these companies  
13          have foul nests in our area. In fact, Luminant  
14          and SWEPCO have been responsible corporate  
15          neighbors and citizens for many years, and we  
16          certainly want to see that continue.

17                  Designation of coal ash as hazardous  
18          material could be detrimental to our local  
19          economy. Not only could it cost us jobs in our  
20          electric utilities industry, but also other local  
21          jobs and services in our communities, county, and  
22          state. Additionally, we could very well see

1 higher costs for consumers in electric rates and  
2 even natural gas prices in our area.

3 Let me take a moment to explain the  
4 economic benefits we currently enjoy with the  
5 presence of these utility companies in our county.  
6 These electric utility companies paid over \$25  
7 million in property taxes in 2009, which benefited  
8 not only our county, but our communities, schools,  
9 community college, hospital, and other local  
10 taxing entities.

11 These electric utility companies provide  
12 over 700 jobs directly to our area, plus many  
13 others that act in a support capacity to these  
14 utility companies. Companies such as Boral are  
15 located in Titus County and recycle coal ash  
16 products.

17 Job creation and the protection of  
18 current jobs are vital to our economy, not only in  
19 Titus County but also in Texas. The recent  
20 downturn in our economy, along with the recent  
21 loss of many jobs due to changes in the poultry  
22 industry and Pilgrim's Pride Corporation, cause us

1 great concern when other jobs could likely be  
2 threatened by the proposed rule changes.

3 The TCEQ's comprehensive CCR handling  
4 and disposal regulations has proven effective. As  
5 a result, there have been no catastrophic failures  
6 at any facilities in Texas.

7 We, along with the power generation  
8 industry, support the continued designation and  
9 regulation of CCRs as non-hazardous waste.  
10 Regulation of CCRs as hazardous material would  
11 strip states of the ability to cost effectively  
12 regulate CCR disposal practices and would impede  
13 the beneficial use of CCRs. This will impact  
14 jobs, consumer costs, local and state government  
15 revenues, coal mining jobs, and other things.

16 Thank you again for this opportunity.

17 MR. BEHAN: Is 97 here? Ninety-nine.

18 SPEAKER: Good afternoon. I'm Matt  
19 Childs, president of the American Concrete Pipe  
20 Association, a licensed professional engineer in  
21 the state of Texas, and I have a master's degree  
22 in environmental engineering from the University



1 of Texas at Arlington.

2 I grew up working in a concrete pipe  
3 plant and paid for my college that way and have  
4 actually been probably one of the few people here  
5 who has held fly ash in their hands. And, yes, I  
6 still have hands.

7 The American Concrete Pipe Association  
8 is here today representing our 50 member companies  
9 with 298 facilities located throughout the United  
10 States. Our industry manufactures approximately  
11 9.8 million tons of concrete drainage products  
12 annually. That translates into 1.2 million tons  
13 of cement and 400,000 tons of fly ash consumed.

14 If fly ash is ruled to be a hazardous  
15 waste requiring special handling, it would become  
16 cost prohibitive to use. Our members would be  
17 forced to use only cement in the manufacturing of  
18 their concrete pipe. Using only cement, rather  
19 than fly ash, would result in an additional annual  
20 cost to our industry of \$40 million. It would  
21 also hurt our ability to compete with a product  
22 that actually does hurt the environment: Plastic

1 pipe.

2 Four hundred thousand tons of fly ash  
3 would not be encapsulated in concrete. Four  
4 hundred thousand tons of additional cement would  
5 need to be made using cement products. This, in  
6 turn, would negatively affect the marketplace for  
7 not only highway drainage products but for all  
8 concrete structures.

9 The ACPA understands the need for the  
10 EPA to craft an approach that protects the public  
11 health and the environment to address the  
12 shortcomings of the current regulations governing  
13 impoundments, like those that failed and resulted  
14 in the spill at the Kingston facility in 2008.  
15 However, additional requirements burdening the  
16 beneficial use of fly ash is not the answer.

17 The American Concrete Pipe Association  
18 agrees with EPA's position that it should not  
19 change the May 2000 regulatory determination for  
20 beneficial use CCRs. The EPA has acknowledged  
21 that it has seen no evidence of damages from the  
22 beneficial uses of CCRs. It also believes that

1       such beneficial uses of CCRs offer significant  
2       environmental benefits.

3               Although the EPA would list CCRs under  
4       Subtitle C as a special waste by using Subtitle C  
5       to regulate CCRs, the EPA would be branding CCRs  
6       as a hazardous waste de facto.

7               Given the choice of the two proposed  
8       alternatives by the EPA, the ACPA supports  
9       Subtitle D as being better suited to improve the  
10      safety of storing CCRs in impoundments, while not  
11      burdening CCRs with the label of hazardous waste.  
12      Thank you for your time today.

13              MR. BEHAN: One hundred, 101, 105, 106,  
14      and 109, please.

15              SPEAKER: Thank you for this opportunity  
16      to comment on the proposed CCR management rules.  
17      My name is Craig Bennett. I'm a geologist with  
18      Bullock, Bennett & Associates, a geoscience and  
19      engineering firm located in Bertram, Texas.

20              I speak from 18 years of direct  
21      firsthand experience with CCR projects in Texas.  
22      These projects include CCR characterization,

1 landfill design, construction oversight, operation  
2 support, risk assessment, facility closure,  
3 groundwater modeling and monitoring, and recycling  
4 support.

5 Despite the misinformation commonly  
6 promulgated by many supporters of CCR regulation,  
7 the current program in Texas does provide for such  
8 common-sense safeguards as landfill liners,  
9 groundwater monitoring, and cleanup standards.

10 CCR disposal facilities in Texas are  
11 strictly constructed in accordance with TCEQ  
12 Industrial and Hazardous Waste Technical Guidance  
13 Number 3. Every design and construction of a CCR  
14 landfill in Texas that I've been involved with  
15 over the course of my career has met or exceeded  
16 the technical requirements for liners listed in  
17 Technical Guidance Number 3.

18 Groundwater monitoring is already  
19 adequately addressed by TCEQ Guidance Document  
20 Number 6, as well as many EPA RCRA guidance  
21 documents. I personally manage groundwater  
22 monitoring programs at six CCR landfills in Texas.

1 Again, groundwater at these facilities is  
2 routinely monitored and evaluated, and to suggest  
3 otherwise is wrong.

4 Non-hazardous CCR landfills are  
5 remediated and closed in Texas under the TCEQ's  
6 Texas Risk Reduction Program or the Risk Reduction  
7 Standards. These programs explicitly require a  
8 complete evaluation of soil and groundwater data  
9 to ensure the facilities are closed so as to  
10 remain protective of human health and the  
11 environment. In addition, after closure, ongoing  
12 groundwater monitoring, site inspection, and  
13 maintenance is required to be documented and  
14 submitted for TCEQ review.

15 In 18 years of environmental consulting  
16 on CCR projects in Texas, I have never seen any  
17 waste classification data to remotely suggest that  
18 CCRs should be managed as a hazardous waste. To  
19 regulate CCRs as hazardous is wasteful and  
20 potentially detrimental to ongoing recycling  
21 efforts.

22 If CCRs are not characteristically

1       hazardous, and the primary impetus for these new  
2       proposed rules is the December 2008 Tennessee  
3       Valley Authority dike failure, then shouldn't the  
4       proposed rules be primarily focused on inspection  
5       and maintenance of CCR facility dikes? By the  
6       way, we also do that, too. Every CCR landfill  
7       we're associated with is inspected twice per year  
8       by a licensed professional engineer and maintained  
9       accordingly.

10               Again, thank you for the opportunity to  
11       speak here today.

12               MR. BEHAN: Thank you.

13               SPEAKER: My name is Reverend Dr. T.  
14       Randall Smith, and I'm the president of the board  
15       of directors of Texas Impact, a statewide  
16       interfaith organization concerned with educating  
17       faith communities in Texas and then enabling them  
18       to make their voice heard on those public policy  
19       issues which touch on their common teachings and  
20       shared theological understandings.

21               The board I represent is composed of 45  
22       members predominantly from the Jewish, Muslim, and

1 Christian communities of faith. Those 45 persons  
2 represent Catholic, Lutheran, Presbyterian, United  
3 Church of Christ, Society of Friends, United  
4 Methodist, the Christian Life Commission of the  
5 Baptist General Convention, and regional Jewish  
6 and Muslim organizations. It is fair to say that  
7 we provide resources on public policy to millions  
8 of Texans in the interfaith community through our  
9 membership.

10 We are deeply aware that the perspective  
11 we bring to this hearing is somewhat unique,  
12 representing as it does a word from the faith  
13 communities to those with public responsibility  
14 for caring for the good creation which we  
15 received.

16 Within our faith communities, the  
17 preponderance of theological reflection  
18 understanding establishes that human beings have  
19 been entrusted with a responsibility to give  
20 care-filled oversight to God's creation, not in  
21 order to exploit it without regard for the health  
22 and safety of current and future generations, but

1       to ensure that creation is maintained and made  
2       more bountiful for the good of each and every  
3       generation.

4               To exploit the resources God has  
5       provided humanity while damaging, or even laying  
6       waste to, the regenerative power of creation with  
7       which it has been endowed by divine creativity, is  
8       more than criminal to our faith communities; it's  
9       blasphemous, for it despoils that which God has  
10      made and called good.

11             From the perspective of faith, human  
12      beings are to mirror the gracious and loving  
13      creativity of the Holy and Living One. If they do  
14      not, they make false what God has declared: The  
15      divinely-appointed vocation of human beings is to  
16      exercise the sovereign, holy, loving kindness of  
17      God for the sake of the land and the sea and all  
18      the inhabitants thereof. What God has called good  
19      and very good, we may not treat with wanton  
20      disregard for its divine purpose.

21             It is our position that public policy  
22      should be shaped by what is in the interest of the



1 best stewardship of the rich resources with which  
2 we have been gifted. Efficiencies of scale and  
3 cost must not exclude a concern for outcomes in  
4 the lives of those immediately affected and of  
5 those affected long-term by our policy decisions.

6 Economic considerations which do not  
7 protect human life and the creation or which place  
8 short-term profits for shareholders above the  
9 needs of those who are God's primary concern --  
10 the human and natural stakeholders in a  
11 well-tended creation -- are not only short-sighted  
12 economically.

13 Such considerations are, to put it in  
14 blunt religious language, sinful. They defiantly  
15 ignore God's intention for the divinely-wrought  
16 creation and the creatures who inhabit that  
17 creation. That's a perilous way to live and act  
18 and have our being.

19 That is why the faith communities which  
20 are our constituents want to say to you today that  
21 we expect that you will take with utmost  
22 seriousness the careful stewardship of the

1 resources of this part of God's creation. Thank  
2 you.

3 SPEAKER: Good afternoon. My name is  
4 Gary Gibbs, and I work for AEP Texas.

5 Back when I was getting my degree in  
6 civil engineering at Texas A&M almost 37 years  
7 ago, I worked in the environmental engineering  
8 department there at A&M doing research on  
9 coal-fired power generation and specifically on  
10 coal ash. We knew that coal was going to become a  
11 big deal in Texas, and A&M wanted to understand  
12 that. They concluded that there was a very bright  
13 future, for the record, for Texas, and I think  
14 that future has been bright.

15 When I graduated, I went on to work for  
16 the electric power industry, licensing and  
17 building coal-fired power plants. I've been doing  
18 that for more than three decades, working on coal  
19 ash and management of coal ash. I can tell you  
20 that it is one of the most studied and most  
21 well-understood recycling materials. I can also  
22 tell you that a tremendous amount of engineering

1 goes into the design of coal ash management  
2 facilities here in Texas and that those are  
3 well-regulated by the TCEQ.

4 Coal fly ash and portland cement have  
5 remarkably similar properties. Fly ash is  
6 commonly used in portland cement concrete to  
7 improve the quality of concrete mix, making it  
8 easier to pour and to pump. The end result is a  
9 stronger, longer-life concrete that wouldn't  
10 otherwise be possible. That's why the  
11 much-respected American Society of Testing and  
12 Materials has long had specifications for the use  
13 of fly ash in concrete, and that's why the Texas  
14 Department of Transportation specifies the use of  
15 coal fly ash in concrete for its highway projects.

16 Those who were working in this area  
17 early on remember clearly the waste stigma that  
18 coal ash recycling efforts faced at that time. We  
19 had a good story to tell, and we overcame that  
20 stigma. Today, the use of coal ash in concrete  
21 stands as one of the most successful recycling  
22 stories.

1                   Unfortunately, the EPA's proposed rule  
2           could severely cripple this shining success and  
3           have the resulting effect of driving up the cost  
4           of concrete and causing fewer transportation  
5           projects to be built across this country. Instead  
6           of being recycled, this coal ash will instead go  
7           into industrial landfills. Countless new, large  
8           landfills will be required to bury this much ash.

9                   I urge you to reconsider your approach  
10          and not adopt the rules that would further  
11          stigmatize coal ash. It's far too valuable of a  
12          resource to simply bury.

13                   MR. BEHAN: Thank you.

14                   SPEAKER: Hi. My name is Erin Hickok,  
15          and thank you so much for having this hearing here  
16          today. I'm honored to be here.

17                   I'm representing myself as a citizen  
18          from Austin, Texas, and I'm representing myself as  
19          an aunt of two nieces and a nephew. I represent  
20          my two roommates who work in the solar industry at  
21          home in Austin. I represent a group of people  
22          who, despite the rain, came here wanting to give

1       their comments. About 15 of them had to leave a  
2       little bit earlier today.

3               I also represent 200 -- actually, 449  
4       people who have submitted both handwritten letters  
5       and signed comments to the EPA asking for stronger  
6       protections from toxic coal ash. So I'd like to  
7       submit these to you today.

8               Perhaps the person -- the people that  
9       I'm representing the most is our future, and I  
10      just wanted to share this with you. This is a  
11      picture that was collected. It was made by a  
12      9-year-old and an 11-year-old. They created this  
13      to give to the EPA as their comment.

14              I just wanted to share all those  
15      comments that I brought with you today. They were  
16      actually collected in just the past two days,  
17      right here in Dallas, of just people knocking on  
18      doors and saying, hey, what do you think about  
19      coal ash? Just getting people's opinions, just  
20      two days. Less than 20 people -- 15 people just  
21      going out and knocking on doors. They took their  
22      time to make handwritten letters because they

1       couldn't be here today.

2               I do want to thank you for having us. I  
3       want to thank you for taking the comments. We  
4       urge you strongly to provide the best protection  
5       for our future, to really provide the best  
6       opportunity for wind and solar power, and to make  
7       sure that we're keeping our water and our air as  
8       clean as possible. Thank you.

9               MR. BEHAN: Thank you. Number 97. Is  
10      there anyone else in the room that has not spoken  
11      that has a number of 100 or lower? 109, 111, come  
12      on up. 114, 115, and 116, if you would come  
13      forward, please.

14              SPEAKER: Hi. My name is Stephanie  
15      Jordan, and I am a farmer from a small community  
16      near Oklahoma City. As a farmer, I want to follow  
17      up on some of the conversation that's been going  
18      on about how farmers need access to the products  
19      that are manufactured from fly ash. I gotta say  
20      as a farmer, I wouldn't want this crap near my  
21      food.

22              That being said, I've studied this issue

1       a lot. I'm an activist and it really has -- it  
2       has struck a chord with me. In trying to boil  
3       down something so complex that I feel really  
4       passionate about into a three-minute argument, it  
5       occurred to me, there are really only two elements  
6       to this argument. There is health and there is  
7       dollars. I don't know why in this country we keep  
8       trying to barter those two things. To me, they're  
9       not interchangeable. But since we're here and  
10      that's what we're doing, let's just try on each  
11      other's argument.

12                So everybody on the health side of this  
13      argument, if you would take a moment to do an  
14      experiment with me, and ask yourself what dollar  
15      amount it would take for you to be willing to ask  
16      your neighbor to live near an unregulated fly ash  
17      dump. Whatever that dollar amount is, it's not  
18      the dollar amount we're saving on our electric  
19      bill by keeping things the way that they are. So  
20      when you say health versus dollars, health wins.

21                Everybody on the dollar side of the  
22      argument that are coming up here trying to tell us

1       that this product isn't unsafe, I'd like to ask  
2       you to do me a favor. I'd like you to go home  
3       tonight, take a tablespoon of fly ash, stir it  
4       into a glass of Kool-Aid, and feed it to your  
5       children, because that's what you're asking me to  
6       do, and that's what the people in towns like  
7       Bokoshe and the 900 other towns that live near a  
8       fly ash dump, that's what they have to do every  
9       night.

10               That's not a good choice. But we're  
11       being asked to do that so people don't have to  
12       change their business model. And I just want to  
13       tell you, I'm not interested in drinking your  
14       Kool-Aid, I'm not interested in my neighbors  
15       drinking your Kool-Aid, and I hope that the EPA  
16       isn't interested in drinking your Kool-Aid either.

17               I would really appreciate it if you  
18       would consider implementing Subtitle C and making  
19       that a good starting place. Thank you.

20               MR. BEHAN: Thank you.

21               SPEAKER: My name is Whitney Pearson,  
22       and I'm a resident and concerned citizen of



1 Oklahoma.

2           If we were to move this country beyond  
3 coal, we end the problem of coal ash; but until  
4 America is ready to end its addiction to this  
5 dirty fuel, those who burn it must be responsible  
6 for the by-products.

7           At least two sites in Oklahoma show that  
8 currently those who burn coal are being  
9 irresponsible. The state regulatory agencies have  
10 failed to act, and we need strict, clear,  
11 enforceable regulations of Subtitle C.

12           In Oklahoma, three agencies regulate the  
13 fly ash dump in Bokoshe, as you heard earlier.  
14 For almost two years, citizens who are impacted  
15 daily by the fly ash have called these agencies to  
16 fix the problems in Bokoshe, a problem that these  
17 agencies permitted to get out of hand.

18           Many of us in Oklahoma have called our  
19 elected and appointed officials but only to find  
20 out -- to ask them why they are not addressing the  
21 situation in Bokoshe. They tell us that they  
22 don't have the authority or they don't see any

1 violations or that it's someone else's  
2 responsibility.

3 I've been to the fly ash pit in Bokoshe,  
4 Oklahoma, and I've seen documentation of the  
5 violations; and the failure of state agencies is  
6 obvious. The failure of state agencies is also  
7 apparent in Oologah, Oklahoma, where, for 30  
8 years, the coal-fired power plant has disposed of  
9 its fly ash in an unlined pit.

10 No one monitored the groundwater there  
11 until 2008, and the data shows the contaminants  
12 have leached into the groundwater and there are  
13 heavy metals exceeding both federal and state  
14 maximum containment levels in the groundwater.

15 The operator of the plant has  
16 acknowledged that it has contaminated groundwater  
17 beneath its facility, but unfortunately they claim  
18 that there is no proof that contamination has  
19 spread offsite.

20 Isn't it clear that groundwater  
21 contamination doesn't confine itself within  
22 property lines? Isn't it clear that if the

1 operator were acting responsibly, it would  
2 determine the extent of the pollution instead of  
3 denying its existence?

4 We know from the experience of Oologah  
5 and Bokoshe, Oklahoma; Kingston, Tennessee; and  
6 elsewhere that coal ash is hazardous. So why are  
7 the regulations, if any, so weak? Why is the  
8 health of so many put at risk? Mercury, lead,  
9 cadmium, arsenic, selenium -- the list goes on and  
10 on of heavy metals we know can cause organ  
11 disease, cancer, respiratory illness, neurological  
12 damage, developmental problems.

13 Living near a coal ash site is  
14 significantly more dangerous than smoking a pack  
15 of cigarettes a day, according to a risk  
16 assessment done by you, the EPA. I also ask the  
17 EPA to (inaudible) beneficial reuse of coal ash.  
18 Industry has promoted the idea that dumping fly  
19 ash on the ground is beneficial use. They claim  
20 that farmers can use it as a soil amendment. This  
21 is the same industry that determined you can  
22 safely dump it in a pit in Oologah and didn't even

1       monitor the groundwater for 30 years.

2               We've seen that coal ash pollutants can  
3       build up in plants and animals and these  
4       pollutants can cause deformities and mutations and  
5       thus possibly enter the human food chain.

6               We need the federal enforcement and  
7       financial accountability that a Subtitle C  
8       designation would provide. Coal ash should be  
9       regulated from cradle to grave. Subtitle D is not  
10      sufficient. Please adopt Subtitle C designation  
11      and protect citizens and communities from toxic  
12      coal ash. Thank you.

13              MR. BEHAN: Thank you. 114.

14              SPEAKER: My name is Chuck Gross. I'm  
15      president of the Oklahoma Sustainability Network.  
16      We're very familiar with the Bocoshe situation  
17      which has not resulted in proper controls being  
18      implemented by the permits which were properly  
19      issued or were issued.

20              MR. BEHAN: Sir, could you speak into  
21      the microphone or get a little closer, please.  
22      Thank you.

1                   SPEAKER: The choice is very clear, I  
2     think. The environmental people are all for  
3     Number C. The business people are pretty much for  
4     the Proposal D.

5                   Sustainability takes into account a  
6     third component. These were the components that  
7     were actually designed by EPA, and that is the  
8     social justice area. For people such as those in  
9     Bokoshe, there is no social justice that's really  
10    covered by the Part D proposal.

11                  Business is not just going to take care  
12    of this by themselves. The publicity that  
13    surrounded the Bokoshe fly ash operation, there  
14    were articles and newspaper items published both  
15    in Tulsa and Oklahoma City. Nobody stepped up  
16    from the industry to say, hey, let's make sure  
17    that that's resolved. The regulators who handled  
18    the permitting had their hands tied and limited in  
19    what they could do.

20                  There is another component that's going  
21    to make this more serious, I think. In the cement  
22    industry, the controls of mercury have already

1       been established using maximum (inaudible) control  
2       technology. This increases the mercury component  
3       in fly ash. This is what seems to be headed  
4       toward controls in the power plant industry. This  
5       is going to make that a worse problem than what it  
6       is now.

7               I hope that you will move to adopt the  
8       Subtitle C proposals. Thank you for your time.  
9       Thank you for taking the time to listen to us.

10              MR. BEHAN: Thank you. 115.

11              SPEAKER: Good afternoon. My name is  
12       Edward Silva of Ronald Mark Associates, a company  
13       based in New Jersey. Today, I'm representing the  
14       Geosynthetic Materials Association, the trade  
15       group of 80 companies that manufacture,  
16       distribute, and install geosynthetic materials,  
17       including liner systems. The industry employs  
18       12,000 people throughout the United States.

19              Our comment to the EPA is very simple.  
20       We request that EPA mandate the geosynthetic  
21       lining of coal ash storage facilities using  
22       composite lining systems. In the shortest terms:

1       Use liners, specifically composite liners.

2                   Why? Because liners work. Concerns of  
3       safety regarding CCRs are mitigated if the  
4       landfill storage sites are lined with a composite  
5       liner system of a geomembrane and a geosynthetic  
6       clay liner. A composite liner system prevents the  
7       leachate from entering the environment. Safety  
8       concerns regarding surface impoundments are also  
9       mitigated if the impoundments are lined with a  
10      composite liner system.

11                  The American Society of Civil Engineers  
12      does a regular report card on America's  
13      infrastructure. For the last three report cards  
14      representing over a decade, solid waste has  
15      received the highest grade of any category. My  
16      industry does a good job of taking America's waste  
17      and properly storing it to protect the  
18      environment.

19                  The materials, technology and people  
20      exist, the engineers, engineering techniques and  
21      standards, the general contractors and installers  
22      who build the proper facilities and the regulators

1       and inspectors who assure the work is done  
2       correctly. We urge EPA to use what exists and is  
3       working today.

4               Further, our industry has continuously  
5       improved over time, and EPA has been a part of  
6       that effort. Over the years, EPA has commissioned  
7       nearly 80 studies of the design and performance of  
8       lining systems. We specifically call your  
9       attention to a 2002 study titled "Assessment and  
10      Recommendations for Optimal Performance of Waste  
11      Containment Systems."

12              That study contains a great deal of  
13      pertinent information on how to construct  
14      containment systems. Most illustrative for today  
15      is a graph charting the leakage rate of different  
16      designs over the life cycle of nearly 200  
17      facilities.

18              The composite liner system of a  
19      geomembrane and a geosynthetic clay liner was  
20      demonstrated to have the lowest leakage rate over  
21      all life cycle stages, including a near zero  
22      leakage rate after the facilities are closed and



1       final cover placed. Our materials work. Use of  
2       composite liner systems will achieve the EPA  
3       mission to protect human health and the  
4       environment for all Americans.

5               A brief word on the hazardous or  
6       non-hazardous question. While coal ash does  
7       contain heavy metals, it lacks the traditional  
8       characteristics of hazardous materials:  
9       Radioactivity or the presence of infectious  
10      medical waste.

11             In the opinion of our trade  
12      organization, coal ash can be properly stored  
13      using Subtitle D regulations, a non-hazardous  
14      solid waste designation, with composite liner  
15      systems. Thank you.

16             MR. BEHAN: Thank you.

17             SPEAKER: Good afternoon. My name is  
18      Rita Beving. I am one of the representatives of  
19      the Dallas Sierra Club, which has 4,500 members  
20      here in the Dallas area. We happen to have, in  
21      the Fort Worth club, 1,700 members. I'm here  
22      today in support of Option C for the EPA in

1        regards to the regulation of coal ash.

2                In my 15 years in environmental  
3        activism, I hear the same excuses from industry  
4        when it comes to these sort of regulations being  
5        developed and considered. One is jobs. No one  
6        says there aren't jobs in developing a proper  
7        landfill, monitoring and manifesting that  
8        landfill. So you can create more jobs by having  
9        better regulation.

10              The other thing I hear today is property  
11        taxes. Nobody's going to deny industry paying  
12        their property taxes, even after they get the  
13        proper landfill for their coal ash.

14              The last thing I always hear is sound  
15        science. Well, I believe the EPA has put these  
16        rules out with sound science. And the sound  
17        science that arsenic, cadmium, chromium, barium,  
18        selenium are hazardous to your health is a  
19        well-proven, documented medical fact. So the  
20        sound science of the medical effects of hazardous  
21        waste is there and undeniable and unrefutable.  
22        So, therefore, we don't need any more incidents

1       like Tennessee to tell us that we need coal ash  
2       monitored, regulated, with the proper landfills  
3       and proper disposal.

4               The bottom line is, coal ash needs to be  
5       monitored from cradle to grave, and Option D does  
6       not have the teeth or the enforceable-type  
7       regulations that we need with Option C.

8       Therefore, I urge the EPA to adopt Option C.

9       Thank you.

10              MR. BEHAN: Thank you. Numbers 118,  
11       119, 248, 249, 250, 251, 213, 252, 253, 254. 118.

12              SPEAKER: My name is Tom Smith. I'm  
13       better known as Smitty. I'm director of the  
14       Public Citizen's Texas office, and we are here to  
15       support Subtitle C, which would require far more  
16       stringent regulation of coal combustion waste than  
17       we have today in the United States and Texas.

18              There are a number of reasons why we  
19       support this. We, along with others, have long  
20       been concerned about the prevalence of mercury and  
21       other contaminants in the fish and the lakes  
22       around our power plants. I understand fully that

1       there are significant differences between the kind  
2       of regulation the EPA does of coal combustion  
3       wastes from the plants that burn in Texas, low  
4       sulphur western coal which is imported, and those  
5       that are regulated by Department of Energy and  
6       Railroad Commission that actually mine coal onsite  
7       and then deposit it back in their mines. We wish  
8       these rules would also apply to those kinds of  
9       wastes.

10               But what's clear in Texas is that we  
11       have a significant level of contamination. I  
12       think it's now up to 16 different lakes or bodies  
13       of water, almost all of which are downgradient, as  
14       opposed to downwind, from coal plants. The source  
15       of this is mysterious to all of us. It could be  
16       the emissions coming out the top of the stack or  
17       it could be leachate coming out of the bottom.

18               The problem is we don't know. We don't  
19       have adequate monitoring reported annually in ways  
20       that are understandable to folks around the  
21       plants, nor do we have federal supervision to make  
22       sure the data we're getting are accurate and

1       adequate. We think there is a real advantage to  
2       Subtitle C in that it does require federal  
3       enforceability.

4               Another big issue that we see is that as  
5       our pollution control devices have gotten better  
6       over the years, the toxicity of the coal  
7       combustion waste has gotten higher. Due to the  
8       engineering of many people in this room and many  
9       others, we're now able to pull 90 percent of the  
10      toxins out of the smokestacks. That's the good  
11      news.

12             The bad news is that the by-products,  
13      the toxins, the ash, that is captured in the bag  
14      houses and other pollution control devices is now  
15      then put back into the coal combustion waste and  
16      becomes far more toxic.

17             Things that may have been previously  
18      inert and easily recyclable to use in road bases  
19      and others that cause the contamination of the  
20      various types of catalysts and reagents in the  
21      atmosphere now have various toxic particles  
22      associated with them as well.

1           So the question of what's recyclable is  
2       not as easy or as clear as it was a generation  
3       ago, before we had these pollution control  
4       devices. The decisions you have before you carry  
5       with them significant toxic consequences.

6           Coal combustion waste has been a  
7       significantly covered-up problem for the last 35  
8       years in this country; and the EPA, through the  
9       previous administrations, hasn't had the courage  
10      to do what's necessary or regulate it to protect  
11      public health.

12          My time is up and we think that your  
13      time is up now to regulate it and to do what's  
14      necessary to enforce the rules uniformly across  
15      the states. Had that been done by the state  
16      agencies, we wouldn't have the mess we have today  
17      across Texas and many other states. Thank you  
18      very much for your time.

19          MR. BEHAN: Thank you. Number 119.

20          SPEAKER: Hello. I'm Richie  
21      Benninghoven with USC Technologies out of Kansas  
22      City, Missouri. I've come today to support

1       Subtitle D.

2               Our company -- we're a small business.

3       We have eight employees. We utilize

4       self-cementing, self-encapsulating fly ash to

5       backfill underground limestone mines to stabilize

6       them so that the surface can be put back to

7       productive use.

8               I just want to point out to the EPA that

9       the sites are different and ashes are different

10       all over the country. So to write a rule that --

11       I sympathize with you to write a rule to cover the

12       whole country. It's very difficult, with all the

13       different products and all the different uses that

14       we have for the material.

15               I've got a picture of an underground

16       limestone mine here. It's underneath the water

17       table. You can see it's dry. There is no water

18       coming through. That indicates its high

19       impermeability to water flow. The result of fly

20       ash in backfilling looks like this, after you

21       remove the berm, which is a lot different than

22       what we saw in Kingston. If this were the

1 Kingston ash, it would have flowed out. This  
2 stands at a negative one-to-one slope. So it's  
3 cemented up there. It's encapsulated all these  
4 heavy metals that have been referred.

5 The result of that is over \$200 million  
6 of surface development, such as this office  
7 building, over the top of the mine that would be  
8 not possible without the use of cementitious fly  
9 ash to stabilize that underground mine.

10 I encourage the EPA to consider in the  
11 rule an ash characterization, site  
12 characterization, standard for mine fills, quarry  
13 fills. There are -- I do recognize there are  
14 situations where you do not want to put this  
15 stuff, because of high groundwater flow and  
16 potential for the heavy metals to leach out, but  
17 there are instances where that's not the case. It  
18 can be very protective and very beneficial to the  
19 community and the environment and everybody's  
20 health.

21 Thanks for your time.

22 MR. BEHAN: Thank you.



1                   SPEAKER: Hi. My name is Kelly Elvton,  
2           and I'm speaking as a citizen of Lafayette. I go  
3           to UOL; I am majoring in (inaudible) sources. I'm  
4           here with the Sierra Club because of SPEAK at  
5           school, the environmental action club.

6                   I'm speaking as a happy citizen of  
7           Lafayette, Louisiana, and I'm honored to be here  
8           on behalf of those affected negatively by coal ash  
9           waste, and I'm happy because my drinking water and  
10          air are not so polluted that I have to worry about  
11          toxic and potentially lethal poisoning over time.  
12          I'm also happy because I'm not living in a  
13          community that has to suffer so that energy can be  
14          cheap for everyone.

15                  All the other cities like New Roads,  
16          Mansfield, and Lena, Louisiana, that are home to  
17          coal power plants and coal ash landfills and ash  
18          ponds, in these communities residents have high  
19          cancers of 1 in 50. It's because of the toxins in  
20          the coal ash waste linked to all the cancer and  
21          disease and respiratory illnesses. That is the  
22          general diagnosis for what many people living near

1 the plant suffer with.

2 So, needless to say, on behalf of my  
3 neighboring cities, I strongly support federal  
4 regulation of coal ash, specifically Subtitle C,  
5 because coal ash is a toxic by-product of the coal  
6 industry and it is destroying communities. Thank  
7 you for your time and concern.

8 MR. BEHAN: Thank you.

9 SPEAKER: Good afternoon. I am Roger  
10 Grissette of Tulsa, Oklahoma. I am a retiree with  
11 five granddaughters. I'm a life member of the  
12 Sierra Club, but I'm here today as a private  
13 citizen.

14 We need mandatory federal safeguards to  
15 protect our environment from improper coal ash  
16 disposal. Safeguards require clear and  
17 unambiguous protections for surrounding  
18 communities. Such safeguards should include  
19 composite liners, water runoff controls,  
20 groundwater monitoring, and assurance that  
21 companies have the financial ability to pay to  
22 clean up what they pollute.

1           One thing is clear, coal must be cleaned  
2   up, and the industry cannot or will not clean  
3   itself. EPA should choose the strongest of its  
4   proposed federally enforceable safeguards to hold  
5   this industry accountable and to speed the  
6   transition to a clean energy economy.

7           People living near coal ash sites have a  
8   staggering 1 in 50 chance of contracting cancer.  
9   Both the EPA and the National Academy of Sciences  
10   -- Science have years of research making it clear  
11   that coal ash is toxic and a threat to human  
12   health. I note the industry continues to argue  
13   the contemplated changes would, quote, threaten  
14   the steady, dependable flow of affordable energy  
15   for American consumers and businesses. Most  
16   critics of the power industry would argue just the  
17   opposite. Taking these utilities off the hook  
18   only allows them to further delay necessary  
19   changes to modernize their generation.

20           In addition to the environmental impact,  
21   aging power plants with older technology are less  
22   dependable and place a huge stress on the

1 distribution grid when they fail. Please don't  
2 provide this industry with another excuse to delay  
3 necessary capital improvements needed.

4 Finally, all too often we see warning  
5 flags of companies that pay -- play the system  
6 through delaying tactics and appeals to your  
7 directives. Although such procedures will -- are  
8 legitimate, the recurrence often seems to  
9 characterize a huge tragic event in the making.

10 I don't need to remind you that your  
11 middle name is protection. I ask your special  
12 attention to organizations that have repeating  
13 problems. America can and should do better. We  
14 promised the nation to protect our air, water,  
15 forest, and wildlife. Please help ensure we don't  
16 default on these promises.

17 Finally, I'd like to -- it's not my  
18 first EPA hearing. I'd like to thank you for the  
19 extra effort you made to include people, to in --  
20 by rearranging things, and also by extending the  
21 period. Appreciate it.

22 MR. BEHAN: Thank you. Number 102, 123,

1       124.

2                   SPEAKER: Good afternoon. My name is  
3       Amanda Robinson. I am coordinator of Texas  
4       Interfaith Power and Light, the environmental  
5       program of Texas Impact, Texas' oldest interfaith  
6       public policy advocacy organization. I'm also a  
7       second-year master's of divinity student at Austin  
8       Presbyterian Theological Seminary. And I'm a mom.  
9       Thank you for the opportunity to be here today.

10                  There is a teaching in the Jewish  
11       tradition from Rabbi Israel Meir ha'Kohen. He  
12       said, When a group of people are sailing in a  
13       boat, none of them has a right to bore a whole  
14       under his own seat. This is a simple teaching  
15       about basic care and concern for our neighbors,  
16       about the responsibility we each have to the  
17       larger community, and about the fundamental  
18       reality that our lives here on earth are both  
19       fragile and highly interconnected. When we allow  
20       toxic substances to enter our environment, human  
21       health suffers. It's a lot like drilling a hole  
22       in our boat.

1           Of all the states, Texas generates the  
2       second highest amount of coal ash, 12.9 million  
3       tons every year, and yet we do not have adequate  
4       regulations in place to protect human health or  
5       the environment. Toxic coal ash, when not  
6       properly disposed of, poses risks that include  
7       elevated mercury and selenium in water and fish,  
8       and increased cancer risks in people. Basic care  
9       and concern for our neighbors calls us to do what  
10      we can to keep people safe, especially the poor  
11      and people of color, who often live in areas  
12      subject to coal ash contamination.

13           The religious leaders and congregations  
14      with whom I am honored to work, pray for a day  
15      when all electricity will be generated from clean,  
16      renewable sources. Until that day comes, we ask  
17      that coal ash be tested to ensure safety before it  
18      is allowed to be recycled. And we ask that  
19      federal standards be put into place to ensure  
20      protections for human health and the environment.  
21      We support adoption of the Subtitle C option.

22           There is one more teaching that I'd like

1 to share with you today. In my tradition, human  
2 beings are recognized as being different from the  
3 rest of creation. This does not give us license  
4 to exploit the natural world, though. On the  
5 contrary, as Rabbi Howard Kushner explains, We  
6 have a special responsibility precisely because we  
7 are different, because we know what we are doing.  
8 We know what we are doing. Now, we need to take  
9 responsibility for it. Please adopt the Subtitle  
10 C option. Thank you.

11 MR. BEHAN: Thank you. 123, 124, 129.  
12 Is there anyone in the room that has a number that  
13 begins with 100 that has not spoken? 254, 255,  
14 256, 257. Is there anyone in the room -- if you  
15 have a number in the room and you have not spoken,  
16 could you just hold up your number or hold up your  
17 hand? One, two, three, four. Why don't -- why  
18 don't everyone who has a number come on up to the  
19 front.

20 Go ahead, ma'am.

21 SPEAKER: Thank you. My name is Evelyn  
22 Merz. I am the conservation chair of the Lone

1       Star Chapter of the Sierra Club. And I want to  
2       thank you all for having this meeting here today.

3               Time has taught us that coal ash is not  
4       benign, even though there are beneficial uses. It  
5       is not benign when improperly stored. Coal ash  
6       pollutes the groundwater. It is not benign when  
7       impoundments break and the coal ash slurry escapes  
8       to the neighboring streams.

9               There has to be an acknowledgment that  
10       there are costs. There are costs to people and  
11       the environment when a substance containing  
12       arsenic, lead, mercury, cadmium -- and the list  
13       goes on -- is improperly stored and unmonitored,  
14       and occasionally and sometimes often essentially  
15       unregulated.

16              We recommend that the EPA adopt Option  
17       C, which will establish federally enforceable  
18       standards for waste management and disposal. The  
19       current system does not protect water or people or  
20       the environment. Option D, which would rely upon  
21       the states to enforce guidelines, is not adequate.  
22       It certainly will not work in Texas where the



1 Texas Commission on Environmental Quality is  
2 absolutely legendary for its lax enforcement of  
3 air and water quality standards.

4 Thank you again. And I hope that you  
5 take the comments you hear today to heart. And we  
6 appreciate your attention. Thank you.

7 MR. BEHAN: Thank you. If the remaining  
8 speakers could self-order from lowest to highest  
9 and come up, that would be great.

10 SPEAKER: Good afternoon. I'm a  
11 resident of West Houston. My name is V.J. Singal.  
12 And I'm testifying as a member of the general  
13 public. I might add, a member of the general  
14 concerned public. Whenever I get a chance to  
15 appear before a highly consequential governing  
16 body such as yours, I like to invoke a key phrase  
17 from the Abraham Lincoln Gettysburg Address. The  
18 phrase, a government for the people, which  
19 translated into today's issue at hand would mean  
20 putting the clamps on any industrial activity that  
21 is detrimental to the public's health, an activity  
22 that is endangering the public's health.

1                   Gentlemen, you have plenty of  
2       incontrovertible evidence that coal ash is highly  
3       toxic, that is -- that it is unquestionably  
4       deleterious to the public's health. And you've  
5       also got similarly irrefutable evidence that the  
6       TCEQ has been utterly lax in monitoring and  
7       implementing the Clean Air Act and other  
8       environmental regulations. A case in point is the  
9       Fayette plant outside Austin where coal ash has so  
10      badly contaminated the water that it has been  
11      rendered undrinkable. I would say a perfect  
12      testimony to the TCEQ's apathy in matters  
13      environmental.

14                  And so if we -- if we are to adhere to  
15      the maxim of government for the people, then I  
16      think it's imperative and mandatory that the EPA,  
17      which is after all the protector of last resort  
18      for the American people -- when it comes to the  
19      environment, that the EPA would have to take firm  
20      and speedy steps to ensure new regulation, a  
21      regulation that is tough, that is unambiguous, and  
22      enforceable. And I believe that if you do that,

1       you will have every reason to feel truly ennobled.  
2       I thank you for giving me this opportunity to  
3       speak.  Thanks.

4               MR. BEHAN:  Thank you.

5               SPEAKER:  Good afternoon.  My name is  
6       Eric Ball.  I am a secondary educator from New  
7       Orleans.  My background is in biology.

8               A few years ago, I was fortunate enough  
9       to do some ecology research in the Ecuadorian  
10      Amazon.  And while there, I witnessed firsthand  
11      the irresponsible and unregulated activities of  
12      humans in the form of oil exploration.  I saw the  
13      deleterious consequences that this had on the  
14      indigenous communities and on the ecosystems.

15              And I am here testifying today because  
16      coal ash similarly threatens these ecosystems,  
17      which are networks of interrelatedness that --  
18      through which life expresses itself.  And they are  
19      both unfathomably complex and amazingly delicate.  
20      They have -- they have developed and persisted  
21      over the course of millions of years.

22              Coal ash has already been demonstrated

1        scientifically to have deleterious effects on the  
2        environment through leaching of heavy metals, as  
3        well as toxic organic compounds. And many -- and  
4        it's especially fragile because many of these  
5        ecosystems throughout the country have already  
6        been fractured by human activity. The only  
7        responsibly acceptable option before us is the  
8        adoption of Subtitle C, which gives a strong  
9        federal regulation of the coal ash storage and  
10       treatment.

11                Continuing to damage these ecosystems  
12        would be an incalculable loss to ourselves and  
13        future generations because through the knowledge  
14        we gain by studying and examining the different  
15        networks of life and the myriad expressions of it,  
16        we can better and more fully understand ourselves.

17                In addition to the more direct effects  
18        that the pollution has on the environment, there  
19        are also more subtle effects because of our  
20        inextricable relationship with the environment and  
21        our reliance upon it. So destroying the -- these  
22        ecosystems will have a hugely negative

1       consequence, many of which will be seen for a long  
2       -- for many years to come and are potentially  
3       irreversible.

4               So I urge the EPA to adopt Subtitle C  
5       for stronger federal regulations. Thank you for  
6       listening.

7               MR. BEHAN: Thank you.

8               SPEAKER: My name is Ari Guerrero. I'm  
9       here representing citizens from Austin, Texas.  
10       I'm really impressed and happy to be here. Today,  
11       I have talked to many people who have traveled 6  
12       to 12 hours in the rain, through flooding to be  
13       here to tell you the message that I wish to  
14       convey. And that is simply that it's time for you  
15       to do the right thing.

16               I wear contact lenses. Without contact  
17       lenses, I am legally blind. I would not be able  
18       to see the paper in front of me. No one else in  
19       my family wears glasses or has any vision  
20       impairment. I never -- I didn't watch TV as a  
21       child. And doctors tried to figure out why I of  
22       my family had this problem. And it wasn't until I

1       was 15 that I was told it was because I eat tuna  
2       fish. Tuna fish has mercury. Mercury comes from  
3       coal plants. And I happen to like tuna. And as a  
4       result, I cannot see.

5               I think it's human nature to not weigh  
6       future consequence -- consequences of our actions.  
7       We don't understand what will happen to -- to  
8       people, to a six-year-old who lives in a town  
9       nearby a coal plant. What effects will the  
10      decisions that our government make have on  
11      citizens -- on private citizens of these  
12      communities surrounding these coal plants. I  
13      think that it's time that we do what's right. And  
14      I'm just asking you to pass Option C today. Thank  
15      you.

16              MR. BEHAN: Thank you.

17              SPEAKER: My name is John Cooper, Austin  
18      Lone Star Sierra Club member. I want to first and  
19      foremost thank you and everyone who's been  
20      responsible for the -- allowing the opportunity to  
21      speak here today. But I -- in addition, I would  
22      like to thank you for your attentiveness, your

1 level of attentiveness. You've really been  
2 listening. I've been out there for a while,  
3 listening myself, also. And this is an extremely  
4 complex and -- and -- and has -- covers a lot of  
5 ground, this issue. And -- and again, I  
6 appreciate your attentiveness.

7 I would sit there and go, yeah, well, I  
8 want -- I wanted to say that. And yeah, I was  
9 going to say that. And then it was, like, oh,  
10 well, I never really would have thought about that  
11 angle. I really didn't even think about that.  
12 It's been interesting to see some environmental  
13 activists opposed to recycling come up here.  
14 Well, let's end this recycling issue. Okay.  
15 Okay. And then I've see some fine, outstanding,  
16 hardworking American citizens up here defending  
17 their job and the work that they've done,  
18 sanctifying the work that they've done. So this  
19 -- this is an extremely complex issue. And I'm  
20 really not -- I'm really not -- oh, I'm not overly  
21 concerned. And -- and I'm very supportive of  
22 those people. I'm not at all afraid of those

1 people.

2 Well, what does, on a serious level, get  
3 my attention -- what I'm afraid of is mercury,  
4 arsenic, lead, and things like that. These  
5 elements, components, compounds are inherent in  
6 the usage of coal to give us our electricity. And  
7 we need protection, environmental protection from  
8 your agency to safeguard all of us. And that is  
9 why I wholeheartedly bequeath you to support the  
10 toxicity and recognize the toxic hazard of coal  
11 ash.

12 Thank you again for your time. I  
13 appreciate all the effort you're putting into  
14 this. And thank you for everybody who's been in  
15 attendance.

16 MR. BEHAN: Thank you.

17 SPEAKER: Hello, I'm Mary Sue Rose. I  
18 -- I'm here with a group from the Sierra Club, but  
19 I really want to bring to bear my growing up in  
20 Charles -- in West Virginia. I had a coal miner  
21 that lived behind my house in Montgomery. My  
22 grandfather was a coal company doctor. My father



1       was born in -- in a coal community, a very small  
2       town that's now a ghost town, Kaymoor. But he --  
3       then after he got his degree, he went to work for  
4       American Electric Power.

5               He worked for 42 years in the Canal  
6       River plant on -- on the Canal River, of course.  
7       And he was very proud that -- it's been over 50  
8       years now. He sold fly ash to a company to make  
9       it into cinder blocks. And I -- it was -- now, I  
10      want to look back and see if he actually thought  
11      up the idea or if he got on somebody's bandwagon.  
12      But he was really pleased that because he -- he  
13      thought he was getting -- having another purpose  
14      for the waste material. So I wonder now, he --

15             I think a lot of people in what we call  
16      the chemical valley along the Canal River had a  
17      lot of health problems. And I feel like they were  
18      related to the coal mining, the -- the electric  
19      power, the chemicals that were all along that  
20      river. And he's been gone quite a number of years  
21      now. He had heart problems and lung cancer. And  
22      I'm wondering if he would have the personal

1       courage to stand up and say there's something  
2       wrong here and -- and acknowledge that there were  
3       impurities and toxic waste in those cinder blocks.  
4       If he would have been willing to look for another  
5       way to isolate those -- those bad things and still  
6       use the fly ash in a way that we could recycle  
7       them.

8                So I thank you for listening. And I --  
9       I really feel like we need to stand up and -- and  
10      do something about the toxicity, so that other  
11      people don't have health problems in their lives.  
12      Thank you.

13               MR. BEHAN: Thank you.

14               SPEAKER: Good afternoon. My name is  
15      Karen Hadden. And I'm the director of the  
16      Sustainable Energy and Economic Development  
17      Coalition here in Texas. And thank you for being  
18      here.

19               You may know that Texas has some of the  
20      most polluting coal plants in the nation. Five of  
21      our coal-burning power plants have been at the top  
22      ten for mercury emissions when you look at the

1 toxic release inventory. We have had problems  
2 with coal ash and we are seeking rules that will  
3 help protect in the future.

4 In the 1970's, coal ash ponds  
5 overflowed. And this resulted in selenium getting  
6 into Brandy Branch Reservoir and also around  
7 Martin Creek Lake. And as a result, the selenium  
8 levels went up in the fish, the health department  
9 had to issue advisories against eating fish in  
10 those reservoirs. And that has serious health  
11 impacts. Many of the elements in this waste --  
12 arsenic, cadmium, selenium, zinc, manganese,  
13 chromium, nickel, thallium -- these have serious  
14 health impacts. That's why I think Subtitle C is  
15 the best way to go.

16 These rules need to be strengthened. We  
17 need to prevent problems like this from happening  
18 again. We need federally enforceable standards.  
19 We need to phase out old ponds. We need to  
20 establish minimum standards. And these sites need  
21 to be monitored. State or federal issued permits,  
22 they should -- they should be applying to all coal

1       ash dumps. And we do need cradle-to-grave  
2       monitoring of all of these sites.

3               I thank you. And again, there is ample  
4       scientific evidence, as well as plenty of  
5       on-the-ground incidences that justify going for  
6       stringent protection. Thank you.

7               MR. BEHAN: Thank you.

8               SPEAKER: Hi, I am Michael Nicodemus.  
9       I'm a professor of environmental science at  
10      Abilene Christian University. I'm not a member of  
11      an environmental group. But there are a couple  
12      things -- what I've been looking at this, teaching  
13      my students about environmental law and policy,  
14      that kind of struck me about this particular case.

15              One thing that I question is why this --  
16      these wastes wouldn't be considered to be  
17      characteristic wastes under the toxicity  
18      characteristic in the -- in the regulations  
19      already. From the EPA Web site, it says that  
20      toxic wastes are harmful or fatal when ingested or  
21      absorbed, e.g. containing mercury, lead, et  
22      cetera. And it goes on. To me, it seems odd that

1 wastes that have been known to contain these  
2 things wouldn't automatically fall under that  
3 particular provision of the RCRA.

4           Some of the people from industry have  
5 complained that -- and rightfully so -- that it  
6 will be a stigmatization of their products if  
7 they're considered to be toxic. And I think  
8 that's a -- that's a sincere argument. But I  
9 wonder if that may not be a bad idea, for things  
10 to be stigmatized, if they are truly toxic. If  
11 the drywall in my house can cause children to  
12 become sick, it could cause me to become sick.  
13 When you tear those things out of my wall, that  
14 causes me to become sick, then it should probably  
15 be stigmatized. It should probably be regulated,  
16 as well.

17           I don't -- understand it's not under the  
18 proviso of this particular hearing, but I think  
19 also the stigma would also promote alternative  
20 force -- forms of energy, which would help us to  
21 provide for the future energy needs of this  
22 country. I think, you know, if there is a stigma,

1       if there is added cost to these forms of  
2       electricity, then we may look at other sources of  
3       electricity.

4               The lady who talked a couple before me,  
5       was from West Virginia. Actually, I'm also from  
6       West Virginia. So it's good to know there's some  
7       other -- some other hillbillies here. But I grew  
8       up 12 miles from a coal-fired -- well, a steel  
9       mill that used coal as part of the steel refining  
10      process in Fallensby, West Virginia. And under  
11      the Clean Air Act, they were grandfathered in, so  
12      they didn't have to change the way that they were  
13      releasing emissions. And it's one of the most  
14      polluted towns in America because of that.

15             And I think if you use four -- the  
16      Subtitle 4 -- I'm sorry -- D Prime provision that  
17      grandfathers in these wastes, you'll have a lot of  
18      the same kinds of problems. Places that are  
19      obviously doing the wrong thing now that won't  
20      change because the law won't force them to change.  
21      And obviously the states are not going to make  
22      them to change.

5 MR. BEHAN: Thank you. Are there any  
6 other people here that have not spoken and have a  
7 number? Seeing no speakers, we will take a  
8 10-minute break. Thank you.

10 MR. BEHAN: Good afternoon. We're going  
11 to go ahead and continue with the public hearing.

19 SPEAKER: I'm Byron Ryder. I'm the Leon  
20 County Judge. And I'm here on behalf of Leon  
21 County, basically.

1       current county judge of Leon County, Texas. We  
2       have three coal power -- generating power plants  
3       in the immediate area. And I want to go on record  
4       as saying that I oppose the further regulation of  
5       federal government in these -- in these power  
6       plant.

7               Specifically, I'm referring to the  
8       regulation of the CCR as a special listed waste  
9       under Subtitle C of the -- of the Resource  
10      Conservation and Recovery Act. The coal-generated  
11      power plants provide an economic engine for our  
12      area, as well as many other related companies that  
13      use by -- the byproducts. The Subtitle C approach  
14      is not supportable given the availability of  
15      alternate, less burdensome regulative --  
16      regulatory options under the RCRA's non-hazardous  
17      material rules that provide an equal degree of  
18      protection from the public health and environment.

19             In our area, we have been working with a  
20      company that desires to locate near our Jewett,  
21      Texas power plant, and would use our -- the ash  
22      byproduct to provide manufacturing jobs to



1       approximately 100 people. These would be new jobs  
2       with excellent pay scale and benefit plan. They  
3       are awaiting your decision on whether or not to  
4       build this new plant. In spite of assurances,  
5       though, the administration that regul --  
6       regulations of the CCRs under the Subtitle C would  
7       have no negative impact on the beneficial reuse  
8       market. The mere discussion of reg -- of  
9       regulating CCRs under the RCRA's hazardous waste  
10      program has already produced a negative effect.  
11      Our economy needs this new plant and needs new  
12      jobs.

13               Also, worth -- worthy of note is the  
14      state environmental protection agencies from  
15      around the nation have repeatedly cautioned the  
16      EPA that the Subtitle C approach for CCRs will  
17      overwhelm the existing hazardous material  
18      capabilities and would -- in our landfills,  
19      further straining the budgets and staff. It makes  
20      no sense to impose adverse consequences on  
21      existing hazardous material programs that the  
22      materials -- material that the EPA has repeatedly

1 found does not warrant regulation under the C --  
2 the RCRA Subtitle C.

3 We believe that the operations in our  
4 area take appropriate actions and precautions in  
5 handling the above-mentioned ash, and if they fail  
6 to do so, they should be held accountable.  
7 However, in light of the near unanimous opposition  
8 from the states and certain -- certain -- and  
9 concern expressed by other federal agencies that  
10 would participate in the process, I urge the EPA  
11 not to pursue the Subtitle C option, but the  
12 Subtitle D non-hazardous waste material that  
13 ensures the protection of human health and  
14 resources.

15 Thank you for your time and  
16 consideration. I look forward and -- to a quick  
17 resolution and response to your -- in this matter  
18 as a procedure for new jobs and industry in our  
19 area. Thank you.

20 MR. BEHAN: Thank you. 263. Is there  
21 any -- anyone here that would like to speak? Come  
22 forward, sir.

1                   SPEAKER: Hi, I'm Jason Faulk from  
2           Lafayette, Louisiana. And to the EPA, I say,  
3           let's get the price right on coal. You might ask  
4           why isn't that price right. This price of this  
5           coal exists in a fantasy land where the natural  
6           laws of the ecosystem services and sustainability  
7           are in absolute suspension. The true cost of coal  
8           does not exist in our economy. It makes a whole  
9           lot more sense in our economy to pollute my air  
10          and your water and turn that damage into cash and  
11          to preserve those resources.

12                   It came as news to me that coal ash  
13          waste was not covered by the EPA rules as a  
14          hazardous waste, and that my city gets half of its  
15          power from a coal plant 80 miles away that's  
16          polluting the waters of someone else's community.  
17          Talk about out of sight and out of mind.

18                   Now, I grew up in south Louisiana  
19          hearing story after story of all the contamination  
20          that we have had. I suffer from childhood asthma  
21          myself. And we can't eat the fish that we catch  
22          because of mercury pollution. And we know where

1       that comes from. So I hear about coal ash, and  
2       I'm pretty ticked off that my government's failure  
3       at all levels to deal with this problem.

4               In Louisiana, we already have our fair  
5       share of pollution. And in fact, we have a lion's  
6       share, and we've had enough. I have two young  
7       nieces now. And should they ever suffer and be  
8       harmed as I was, I'll be outraged. They didn't  
9       ask to be born in -- into a world and a state like  
10      this. They should not have to demand that the  
11      most powerful country in the world history honor  
12      their inalienable human right to have as clean and  
13      healthy an environment as any other little girls  
14      anywhere else in this country or world.

15             Since 1970, our nation has cleaned up  
16      pollution. Since 1990, we have set rules to guide  
17      industry into preventing that pollution in the  
18      first place and become more efficient so as to  
19      reduce waste creation. And in the process,  
20      preserve our health and that of our environment.  
21      And these two are one in the same.

22             So again, why isn't the price of coal

1       right? I have my Pollution Prevention and Waste  
2       Minimization textbook right here. And there's all  
3       kind of talk about mining and tailings and  
4       metalworking, glues, furniture, paint, and  
5       petroleum, RCRA and FIFRA, TOSCA and CERCLA, EFA,  
6       and all that. And there ain't one darn thing in  
7       this book about coal ash. Nothing.

8               So for the EPA, let's get the price  
9       right on coal and implement some rules under  
10      Subtitle C that will ensure that power plant  
11      operators conduct business as responsible  
12      industrial parties. We must have Subtitle C rules  
13      implemented on coal ash to send to the marketplace  
14      a real signal on the true cost of making  
15      electricity from coal burning. We must send a  
16      real market signal on the price of coal-fired  
17      electricity. And when we do, we're going to  
18      stimulate our nation's effort to use electricity  
19      frugally, to make investments in energy  
20      efficiency, and employ the wide use of our  
21      conserved natural resources above and below the  
22      surface. As long as entitle ourselves to fantasy

1       land cheap coal, we're going to continue to waste  
2       it. Thank you for your time, gentlemen.

3               MR. BEHAN: Thank you. Are there any  
4       other speakers in the room? Not seeing any, we'll  
5       take a break until 6:15. Thank you.

6                       (Whereupon, at 5:54 p.m., an  
7                       afternoon recess was taken.)

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(6:20 p.m.)

This is the third of seven scheduled public hearings that will be conducted. We had two very successful hearings last week in Washington, D.C., and in Denver. The remaining hearings that are scheduled are in Charlotte, Chicago, Pittsburgh, and Louisville.

My name is Bob Dellinger. I'm the director of Materials Recovery and Waste Management Division in the EPA's Office of Resource Conservation and Recovery. I'll be chairing this evening's session of today's public

1       hearing. With me on the panel are Laurel Celeste  
2       from our Office of General Counsel and Craig  
3       Dufficy and Steve Souders, who work with me in the  
4       Office of Resource Conservation and Recovery.

5               What I'm going to do now is go over the  
6       rules of how this is going to work. Because there  
7       are many people who have signed up to provide  
8       testimony today, to be fair to everyone, testimony  
9       is limited to three minutes. We'll be using an  
10      electronic timekeeping system, and we'll also hold  
11      up cards that let you know when your time is  
12      getting low. When we hold up the first card, this  
13      means that you have two minutes left. When we  
14      hold up the second card, you have one minute left.  
15      When the third card is held up, you have 30  
16      seconds left. When the red card is held up,  
17      you're out of time and should not continue with  
18      your remarks.

19             Remember, you can provide any written  
20      material to our court reporter and the material  
21      will be entered into the record. We will not be  
22      answering questions on the proposal. However,



1       from time to time, any of us on the hearing panel  
2       may ask questions of you to clarify your  
3       testimony.

4               Our goal is to ensure that everyone who  
5       has come today to present testimony is given an  
6       opportunity to provide comment. To the extent  
7       allowable by time constraints, we'll do our best  
8       to accommodate speakers that have not  
9       preregistered. Today's hearing is scheduled to  
10      close at 9:00 p.m. We will stay longer if a huge  
11      horde of people come in demanding to speak. It  
12      doesn't appear that's going to happen.

13             We are likely to take breaks to give  
14      speakers that wanted to speak after dinner, you  
15      know, and walk up to speak, so once we run out of  
16      speakers in any given session, we'll take a  
17      10-minute break and see if anybody else will be  
18      coming in to talk.

19             We'll get started right now. I'd like  
20      to call Numbers 263, 264, 265, and 125. We'll  
21      start with 125 and then go in order with 263, 264,  
22      and 265.

1                   SPEAKER: I want to open by thanking you  
2           for coming to Dallas. When the considerations  
3           were made for the emissions of lead from  
4           coal-fired plants, you didn't show up in Dallas.  
5           So I applaud your recognition of our great state  
6           of Texas and our ability to burn coal.

7                   I have not heard any previous sessions,  
8           but I assume that those people have been asking  
9           you to clean up the water, clean up the downstream  
10          pollution and the air problems that coal ash  
11          contributes. Basically what they were trying to  
12          ask you for was a conversion of the indirect costs  
13          to direct costs to burn coal.

14                  Now, we all know that when you burn  
15          coal, you've got to go buy the land, dig the coal,  
16          transport it, build a power plant, burn the coal,  
17          collect the ash, dig another hole, put it in, and  
18          so forth. Those are all the direct costs.

19                  The indirect costs are represented by  
20          groundwater pollution, health costs and increase  
21          of people around, as well as the wildlife that has  
22          got problems, and the life expectancy of both

1 people and animals goes down.

2 Basically, all we're asking you to do is  
3 to level the playing field. Make sure that the  
4 people who are in the business of providing energy  
5 using coal are paying all the costs and at the end  
6 of the day the environment and the society have  
7 had negligible impacts made upon them from the  
8 activities of that energy generation.

9 Now, basically what will happen when you  
10 write those kinds of regulations, the indirect  
11 costs will be converted to direct costs, and those  
12 will be reflected in the cost of the electricity  
13 that people will be buying, and then there will be  
14 more -- the market will be better equipped to  
15 determine which is the better energy source, coal  
16 or some other alternative. It's really a simple  
17 economic requirement or a simple economic  
18 equation.

19 Without the EPA doing the good job that  
20 I know you can do, it will continue to be borne by  
21 the society and the environment. Thank you very  
22 much.

1                   MR.Dellinger: Number 263.

2                   SPEAKER: Hello. My name is Eva  
3 Hernandez. I work with the Sierra Club. I work  
4 here in Texas for the Beyond Coal campaign.

5                   When I talk to people about coal ash, a  
6 lot of people, you know, right off the bat don't  
7 know what it is, what that means. When I start to  
8 explain what it is and how there is very little  
9 state regulation and no federal regulation, people  
10 have mixed reactions.

11                  Some people are shocked. Some people  
12 are -- some people take it personally because of  
13 the impact it has on their own lives. Some people  
14 are infuriated; they want to know what they can do  
15 about it and how this seemingly -- you know,  
16 something that's regulated just like household  
17 garbage, that's a toxic waste, can be allowed to  
18 go unregulated, and people want to know what they  
19 can do about it.

20                  That's why you see people who show up  
21 today drive from Oklahoma, Arkansas, Louisiana,  
22 and from around the state, to ask you to choose

1       Option C, the strong option, to really regulate  
2       this as the hazardous waste that it is.

3               You know, this is really important for  
4       us here in Texas. You know, it's a very important  
5       issue around the country, but here in Texas we  
6       have 17 coal plants around the state, some of the  
7       dirtiest in the country, because our state agency,  
8       the TCEQ, Texas Commission on Environmental  
9       Quality, has done a pretty poor job of actually  
10      protecting our health and well-being.

11             So it's really important that, you know,  
12      people have come here today to ask you to choose  
13      the strong option in regulating this toxic -- this  
14      toxic waste, so that the coal industry is actually  
15      paying for the true cost of operating and they're  
16      actually paying to clean up some of their mess, so  
17      that we're not the ones paying for that with our  
18      health care costs and with dirty water and dirty  
19      air, which is another external cost.

20             Now, we have 12 coal plants in various  
21      stages of proposal and permitting around the state  
22      of Texas. This is a bad idea. We already produce

1       more coal ash -- we burn more coal than any other  
2       state in the country, coal and lignite, and we're  
3       number two as far as states around the country in  
4       the number and the amount of coal ash waste that's  
5       produced. So the last thing that we need is a  
6       dozen other coal plants around the state,  
7       especially when you look at how poorly regulated  
8       this industry really is.

9               We believe strongly that if the coal  
10       industry had to really pay for the cost of  
11       operating a coal plant, we wouldn't see these  
12       dozen coal plants proposed around the state here.  
13       We have people around the state that are fighting  
14       these coal plants because of their health and  
15       because of the impact it will have on their  
16       livelihoods.

17              I ask that you choose the strong option,  
18       the Option C, to really regulate this as the  
19       hazardous waste that it is. Thank you.

20              MR. DELLINGER: Thank you. Number 264.  
21       Please state your name.

22              SPEAKER: I'm Mark Peters, from Hurst,

1 Texas, and I call -- I'm actually here to speak  
2 against the current status quo and ask that you do  
3 as much as you possibly can to address coal ash  
4 and regulate it as aggressively as you possibly  
5 can.

6 Acceptance of coal ash is a moral crime  
7 done by the many to the less many living in many  
8 rural areas near these dumps. Let's be honest.  
9 If these trucks were going down, say, Downtown  
10 Dallas, New York City, Chicago, spewing ash off  
11 the back of the truck, do you really think we  
12 would be having this discussion at this time? We  
13 would not. The problem would be fixed and fixed  
14 very quickly.

15 For the same reason the coal plants are  
16 put in remote locations and their waste is  
17 obviously moved to other more remote locations, it  
18 becomes, well, where there is less people, less  
19 complaints. I think that it should be regulated  
20 as the hazardous material that it is, for,  
21 obviously, the pulmonary reasons, the water  
22 contamination reasons.

1           One issue that I should touch on real  
2       quickly, because I am a Texan, is that states,  
3       particularly Texas, have exempted most or all coal  
4       ash regulations. We have a long history of  
5       questionable environmental regulation here in  
6       Texas. I won't go into that given the time  
7       constraints that we have.

8           Personally -- from my personal  
9       perspective, I actually take out my wallet at the  
10      end of the month and spend more for power, because  
11      we have deregulated electricity here. So I have  
12      100 percent pollution-free power. I do that  
13      because this isn't a planet I own; I simply borrow  
14      it from those that follow us.

15           When I take my wallet out and do that, I  
16      do that because it's the right thing to do. I ask  
17      that you guys and girls, as members of the  
18      Environmental Protection Agency, do not what's  
19      politically or economically expedient, but what is  
20      right by future generations.

21           In closing, the EPA stands for  
22      Environmental Protection Agency. Please, I beg



1       you, for those that can't come today but would be  
2       here if they could, resist industry pressure,  
3       stand up for the environment, and regulate coal  
4       fly ash as the hazardous waste that it is. It is  
5       the right and the moral thing to do.

6               Thank you for coming to Dallas-Fort  
7       Worth and visiting us here and also asking for our  
8       input. In many, many other countries this doesn't  
9       happen. It just gets done; in terms of whatever  
10      they want to build, gets built. So thanks for  
11      taking the time with many, many hours, actually,  
12      to listen to our comments. Appreciate it.

13             MR. DELLINGER: Thank you. Number 265.

14             SPEAKER: Hello. My name is Lydia  
15      Avila. I am brand-new at the Sierra Club. I just  
16      started working there. I actually moved from Los  
17      Angeles, having never been in Texas before in my  
18      entire life. I've been down here two months, and  
19      quickly I've learned a lot about the coal  
20      industry, which is not as much of a problem as it  
21      is here in Texas -- in California.

22             One of the things that I have been

1       thinking about when I was thinking about the lack  
2       of regulation of coal ash was the fact that I  
3       remember when I was about 6 or 7 -- like 7 or 8  
4       years old, there was this recall on a candy that  
5       came from Mexico, because it had lead in it. My  
6       mom was like, don't eat that anymore, never. She  
7       scared me so much that to this day I don't eat it,  
8       even though I don't think it has it anymore. To  
9       this day, I still don't eat that candy. Back  
10      then, it was like this big thing; they take it out  
11      from all the stores.

12               I'm stopping now and thinking, if the  
13      FDA can catch that and there is such a big deal  
14      about getting that candy away from kids because  
15      it's lead, it's bad for your body, and, you know,  
16      a lot of problems that y'all have already heard of  
17      all day today, then why haven't we done this with  
18      coal ash? Why isn't this regulated? It's in the  
19      coal ash, and there is many other things in there  
20      that are poisonous to our body, and the fact that  
21      we haven't yet addressed this, like, is a big flag  
22      for me.

1                   I think that -- you know, I get the  
2           industry pressure, but I just think that it's  
3           absurd that anybody could even argue it not being  
4           regulated. Like, it just doesn't make sense to  
5           me. I'm here today to ask you all to please, you  
6           know, take that into consideration and, you know,  
7           have it regulated under Subtitle C, because it  
8           just seems like the very, very logical thing to  
9           do.

10                   Common sense will tell you that  
11           something that has these elements, these chemicals  
12           in it, these toxic chemicals in it, just shouldn't  
13           be anywhere near kids' water, kids' air, anybody  
14           really, not just kids. Anybody. That's pretty  
15           much it. Thank you.

16                   MR. DELLINGER: Thank you. Is there  
17           anybody else here who has registered to speak?  
18           We'll take a 10-minute break. We're going to be  
19           here until 9:00.

20                   (Recess)

21                   MR. DELLINGER: We're going to start up  
22           again. We have at least one speaker that I'm

1       aware of that has -- is in the room. Can -- is  
2       there any -- is any -- is anybody here with a --  
3       that has a number in their hand that wants to  
4       speak? Okay. Number 266. Remember to state your  
5       name.

6               SPEAKER: My name is Mark McCord. I'm a  
7       member of Dallas Downriver Club. We're an outdoor  
8       recreation club, primarily canoers and kayakers.  
9       I've prepared some statements that I wanted to  
10      make tonight. But in reading information that was  
11      passed out here, I see something that just strikes  
12      me as absolutely absurd. And I'd like to make a  
13      comment on it and perhaps get somebody to think  
14      about this.

15             I'm reading here, regarding the  
16      approaches by -- proposed EPA that would leave in  
17      place the Bevill exemption for beneficial uses of  
18      coal ash and coal combustion residues as recycled  
19      com -- as components of products instead of placed  
20      in impoundments or landfills. And it states large  
21      quantities of coal ash are in use today in  
22      concrete, cement, wallboard and other contained

1        applications that should not involve any exposure  
2        by the public to unsafe contaminants. Whoever  
3        wrote that is an idiot. Anybody that knows  
4        anything about construction knows that if you're  
5        using wallboard, somebody is using a saw and  
6        they're cutting that wallboard. And when they do,  
7        it's presenting contaminants that float up into  
8        the air that are going to be breathed by those  
9        people who were cutting that. I cannot believe  
10       that anybody at EPA would be so naive as not to  
11       understand that.

12                We only have one environment. When it's  
13       destroyed, we're history. We as a people are  
14       gone. I don't understand why this meeting is  
15       taking place for one reason. There's no question  
16       that all these contaminants in coal ash are  
17       unhealthy. Everybody knows that. Why should  
18       there have to be a public discussion to debate  
19       whether or not we need to regulate these things.  
20       It seems to me that the EPA as a government body  
21       -- that we're paying taxpayer dollars for salaries  
22       -- should be taking the lead role and -- and going

1       after regulation on these things. They should not  
2       be listening to lobbyist and other people from  
3       industry who never give a truthful explanation for  
4       anything but instead are involved only in one  
5       thing, protecting shareholder equity and corporate  
6       profits.

7               Now, it seems to me that the EPA needs  
8       to take the bull by the horns and decide when you  
9       have an issue that's as critical to safety of --  
10      of everybody living in this country as  
11      contamination of water, air, or soil that the EPA  
12      ought to be taking an -- a proactive role and  
13      going after everything necessary that they can do  
14      to control these industries that profit from these  
15      businesses they do, and make sure that they are  
16      accountable 100 percent of the time for the things  
17      they do. And that includes repayment to the  
18      government of any expense incurred in enforcing  
19      regulations or laws that are meant to protect the  
20      public. I would ask the EPA to strongly consider  
21      a pol -- a policy that in the future does not give  
22      credence to the people who are in business, but

1       rather protects the citizens of this country.

2       Thank you.

3               MR. DELLINGER:   Thank you.   Does anybody  
4       else have a number?

5               SPEAKER:   I had one from 6:15.   124,  
6       yeah.   But I was signed in for the last session,  
7       so --

8               MR. DELLINGER:   That's no problem at  
9       all.

10              SPEAKER:   Thank you.   My name is Bud  
11       Scott from Oklahoma City, Oklahoma.   I am the  
12       director of the Oklahoma Sierra Club.   And I want  
13       to thank you all tonight for taking your time and  
14       giving the public the opportunity to comment on  
15       this very important issue, which is detrimental to  
16       our public health, safety, and economic  
17       development.

18              In Oklahoma, as you've heard throughout  
19       the day, we've had several issues of contamination  
20       related to coal combustion waste.   This has been  
21       documented by both our Oklahoma Department of  
22       Environmental Quality and by some of our

1 independent folks from the Bokoshe community.  
2 We've seen a massive impact on public health to  
3 these areas. Not just with public health, but  
4 also with groundwater contamination, surface water  
5 contamination, and permanent surface  
6 contamination, as well.

7 I urge you guys to adopt the Subsection  
8 C option and classify coal combustion waste as a  
9 hazardous substance. It's the best option that we  
10 have. It's the most logical option. I highly  
11 encourage the adoption of this through the EPA.  
12 And thank you all for that consideration.

13 Another point that I really want to  
14 point out is -- and it's been mentioned a few  
15 times tonight. If we want to make a transition  
16 into a true clean energy economy, it's absolutely  
17 essential that we start to recognize the  
18 externalized costs that are incurred with the coal  
19 industry in the United States. Most of them are  
20 paid on behalf of the taxpayer by public health  
21 and our environment. As a proponent of  
22 alternative energies such as wind, solar, biomass,



1       we're never going to have an even playing field  
2       until all these costs are put on the table and it  
3       represents the true cost of coal-fired generation.

4               So for those -- for those very reasons,  
5       I hope that you adopt this rule and classify this  
6       as a hazardous substance. And thank you for your  
7       time.

8               MR. DELLINGER: Thank you. Anyone else?  
9       We'll take another 10-minute break. And we'll  
10      reconvene at -- we'll reconvene at, let's say,  
11      7:10. That will be a 12-minute break.

12              (Recess)

13              MR. DELLINGER: The ten minutes is up.  
14      Is any -- is -- does anybody have a number and  
15      wants to speak? If not, we're going to do a  
16      15-minute break this time.

17              (Recess)

18              MR. DELLINGER: The hearing is now  
19      reconvened. Number 269. And if you -- if you can  
20      state your name.

21              SPEAKER: My name is Carol Nash. And  
22      I'm a citizen here in Dallas. And I work as a

1 teacher for Dallas ISD. And I just saw the --  
2 kind of an amazing, shocking movie next door about  
3 Oklahoma, the town of Bokipse, I think -- Bokipse  
4 [sic]. I can't remember the name. And I didn't  
5 really know too much about the issue coming up,  
6 but we do have a lot of coal burning issues around  
7 Dallas, Texas. But the whole fly -- the coal ash  
8 things was something I'd never really thought  
9 about.

10 But the movie was truly shocking and  
11 horrifying. And so I would like to just add my  
12 comments that we should definitely regulate this  
13 as a toxic product. And that the people there are  
14 just -- the health hazards, the water  
15 contamination, air contamination, it was truly  
16 shocking. So that's my comment.

17 MR. DELLINGER: Thank you. Any more  
18 numbers? Another 15 -- another 15-minute break.  
19 All right. We'll -- we will reconvene at 7:45.

20 (Recess)

21 MR. DELLINGER: Number 267.

22 SPEAKER: Hi, I -- sorry? Yes, my name

1       is Anne Mai. And I'm a student at UTA. I just  
2       watched the video, and I thought it was really sad  
3       that that stuff is happening. I'm sorry. I  
4       didn't think I was going to get emotional.

5               Okay. Anyway, I watched it and I was  
6       really shocked because I just started my major as  
7       an environmental -- environmental engineering  
8       major, and it really shocked me that they don't  
9       regulate this stuff. Like, they regulate  
10      household waste more than they regulate this  
11      stuff.

12             So I think that it's -- it is just  
13      really shocking to me because I haven't even taken  
14      any environmental engineering classes yet. I just  
15      started my basics and stuff. And I personally  
16      feel that it's just common sense to label this as  
17      hazardous. So I just -- I urge you to please  
18      classify coal ash as hazardous under the Sub --  
19      Subtitle C. And -- yeah, please do it. Thank  
20      you.

21             MR. DELLINGER: Do we have another  
22      speaker?

1                   SPEAKER: Hello, my name is Electra  
2           Thornburg. I'm with the Environmental Society at  
3           the University of Texas at Arlington. And after  
4           seeing the video, I was very, very, very surprised  
5           that this coal ash is not labeled as hazardous  
6           waste, which is -- which is just beyond  
7           comprehension.

8                   I feel it would be best that this is  
9           regulated under Subtitle C and that the EPA makes  
10          an example to show that the -- to show that they  
11          can act and protect people's health and families  
12          and communities. And that that -- that's what's  
13          important, so please support Subtitle C. Thank  
14          you.

15                   MR. DELLINGER: Thank you. Any more  
16          speakers?

17                   We'll reconvene in 15 minutes, unless  
18          some speakers come in sooner. Let's make it 7:50.

19                   (Recess)

20                   MR. DELLINGER: Does anybody want to --  
21          does anybody want to speak? It's 7:50 right now,  
22          so we're -- we reconvened. But if there are no

1 speakers, we will again do a 15-minute break.

2 So we will reconvene at -- let me see  
3 here -- five minutes after 8:00.

4 (Recess)

5 MR. DELLINGER: Number 270. Remember to  
6 state your name.

7 SPEAKER: My name is Jennifer Alig. And  
8 I am here as a private citizen and an energy  
9 consumer. I just wanted to talk with you guys for  
10 a little bit about what I feel about the coal ash  
11 dumps that -- that so many of us have heard about  
12 recently.

13 I am very much in favor of a very strong  
14 rule regulating coal ash dumps. I do think that  
15 it's, you know -- it is -- it's something that is  
16 obviously, you know, causing people that live near  
17 these dumps some issues. You know, I -- I'm very  
18 tired of hearing about possible cancer clusters in  
19 people that live near some fly ash dumps. You  
20 know, I -- I don't want to hear about people's  
21 livestock dying, you know, as soon as they're  
22 born. And, you know, basically, drinking out of

1       the ponds that are next to these dumps. That's --  
2       it's something that's very important to me.

3               You know, as an energy consumer, I do  
4       not want energy that I'm using at my home or at my  
5       work to be subsidized by the health or even the  
6       lives of people that live near coal ash dumps.  
7       It's something that I'm willing to pay more for as  
8       an energy consumer to have increased regulation.

9               And it's just -- it's something that I  
10       very strongly support a very strong rule. I hope  
11       that you guys will -- or I hope the EPA will  
12       advocate for a very strong rule and write a strong  
13       rule regulating fly ash dumps. That was all.

14              MR. DELLINGER: Thank you.

15              SPEAKER: Thank you so much. I  
16       appreciate it.

17              MR. DELLINGER: Are there any more  
18       speakers in the room? All right. We'll take  
19       another break until somebody shows up.

20              (Recess)

21              MR. DELLINGER: Your number is 271?

22              SPEAKER: Okay.

1 MR. DELLINGER: Is that right?

2 SPEAKER: I don't know. They told me to  
3 just walk in.

4 MR. DELLINGER: Did you sign in at the  
5 desk?

6 SPEAKER: I just signed in, yes.

7 MR. DELLINGER: Okay. Thank you. And  
8 please state your name.

9 SPEAKER: Sure. My name is Flavia De La  
10 Fuente.

11 All right. My name is Flavia De La  
12 Fuente. And I'm a resident of Austin, Texas. I'd  
13 like to applaud the EPA for recognizing the very  
14 real health and environmental risks posed by toxic  
15 coal ash. Given the seriousness of these risks,  
16 enforce -- enforceable federal safeguards, not  
17 suggestive state guidelines are necessary to  
18 protect our communities.

19 Both the EPA and the National Academy of  
20 Sciences years of research showing that coal ash  
21 is becoming increasingly toxic, which is why  
22 strong federal safeguards need to be issued

1       quickly before more communities are exposed.  
2       Effective regulations should require basic  
3       protections for communities such as composite  
4       liners, water runoff controls, groundwater  
5       monitoring, and financial assurance that companies  
6       pay to clean up what they pollute.

7               The Subtitle D status quo option, option  
8       of suggested state guidelines, is not really  
9       substantially different from current policies and  
10      will definitely result in few, if any, changes in  
11      the state of Texas. The commonsense steps  
12      suggested in EPA guidelines are not new, neither  
13      is the idea that the industry should be taking  
14      these basic precautions. Knowing has not equaled  
15      doing, and the State of Texas will probably not do  
16      so without federal enforcements.

17             Under strong option Subtitle C,  
18      recognizing that coal ash is substantially more  
19      dangerous than household garbage and regulate it  
20      -- regulating it like the toxic substance that it  
21      is will benefit communities and environments  
22      across the country. The commonsense guidelines



1       backed up by federal enforcement and financial  
2       accountability provide much needed environmental  
3       and public health safeguards.

4               As a citizen of Texas, I strongly urge  
5       you to adopt strong option Subtitle C. Thank you.

6               MR. DELLINGER: Thank you.

7               (Recess)

8               MR. DELLINGER: The hearing is  
9       officially closed.

10               (Whereupon, at 8:57 p.m., the  
11       PROCEEDINGS were adjourned.)

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## 1 CERTIFICATE OF NOTARY PUBLIC

2 I, Carleton J. Anderson, III do hereby  
3 certify that the witness whose testimony appears  
4 in the foregoing hearing was duly sworn by me;  
5 that the testimony of said witness was taken by me  
6 and thereafter reduced to print under my  
7 direction; that said deposition is a true record  
8 of the testimony given by said witness; that I am  
9 neither counsel for, related to, nor employed by  
10 any of the parties to the action in which these  
11 proceedings were taken; and, furthermore, that I  
12 am neither a relative or employee of any attorney  
13 or counsel employed by the parties hereto, nor  
14 financially or otherwise interested in the outcome  
15 of this action.

16 /s/Carleton J. Anderson, III

17

18

19 Notary Public in and for the

20 Commonwealth of Virginia

21 Commission No. 351998

22 Expires: November 30, 2012